

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1070

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IN THE
United States Court of Appeals
For the Second Circuit

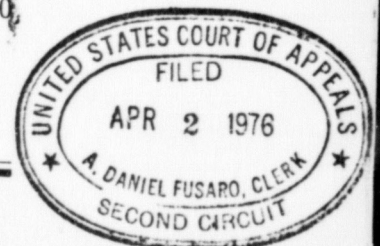
UNITED STATES OF AMERICA,
Appellee,
against
WILLIAM E. DOULIN,
Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of New York

APPENDIX
VOLUME V OF FIVE VOLUMES
(Pages 1165 to 1514)

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DIRECT EXAMINATION(continued)

BY MR. PLATZMAN:

Q Can you tell us, Mr. Doulin, when you first became aware Doulin--

THE COURT: Monell.

Q -- Richard Monell was involved in an assault criminal proceeding?

A I probably read it in the paper. I don't know when it was.

Q During the entire period when these proceedings were pending, did you speak to or have any occasion to meet with Richard Monell?

MR. SCHWARTZ: Objection to the form, your Honor.

A No.

THE COURT: It has been answered. I think the form was somewhat less than perfect, but it will just be rephrased and we will have the same response.

I will let it stand.

Q Did Mrs. Grant at any time during the time that the case was pending from 1968 through to 1971 ever ask you to intercede on her grandson's behalf?

A No.

Q Did you ever offer to intercede on her grandson's

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behalf?

A No.

Q Did you ever ask her for money to intercede on her grandson's behalf?

A Never.

Q For any purpose during any of the proceedings?

A No, sir.

Q At any time?

A No, sir.

Q Do you know Mrs. Grant?

A Very well.

Q How long have you known her?

A At least fifty years. She used to be my neighbor.

Q Do you know her family?

A I know her husband, Bill Grant. I used to play ball with him. He played with the fire company, and so did I. I know her son-in-law, John, but I never knew her daughter until maybe several years ago.

Q But did you know Richard?

A I didn't know Richard, no.

Q During the times that you have met with Mrs. Grant or other members of her family, have there been discussions about Richard?

A Never.

Q Mr. Doulin, had you prior to February of 1971 ever had any discussion with Mrs. Grant in which by direct request, indirect or in any manner reach any understanding with Mrs. Grant concerning her grandson's case?

A No.

Q For any purpose?

A Any purpose.

Q Was it discussed with Mrs. Grant?

A No.

Q Did you from time to time see Mrs. Grant on other occasions?

A Yes.

Q Did you see her frequently?

A Come in quite often. I buried about eight in the family.

Q How old is Mrs. Grant?

A Mrs. Grant testified the other day she is 77. I'm 72. We are neighbors. I have known her --

Q Did you bury members of her family? Were there occasions when members of her family died and had to be buried?

A Yes.

Q To whose funeral parlor would they go?

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2 MR. SCHWARTZ: Objection, he already testified.

3 A Doulin.

4 THE COURT: Yes, he said he buried members
5 of the family. He said it again. Let's leave it at
6 that.

7 Go ahead.

8 Q Did there come a time when her father died?

9 A Yes.

10 Q Was your funeral parlor the one that took
11 care of the burial?

12 A Yes, sir.

13 Q When was that?

14 A Many years ago.

15 Q About how many?

16 A I couldn't pinpoint it, to tell you the
17 truth.

18 Q Prior to 1971?

19 A Yes.

20 Q Was it prior to 1971?

21 A Yes, a long while.

22 THE COURT: You say a long while?

23 THE WITNESS: Yes, a long while ago.

24 Q Did Mrs. Grant or any other member of her
25 family ever pay you for that funeral?

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2 A No, I must say she attempted to pay me a
3 couple of dollars time and again. I told her -- they
4 didn't have any money. She lived in the neighborhood
5 with me. We lived in a poor neighborhood. I used to
6 tell her when she got better fixed, she would take care
7 of it. Apparently she never got better fixed.

8 Q Did you from time to time in the neighborhood
9 also arrange the burial of others and not charge them?

10 A Yes.

11 Q What kind of an area is it that you have
12 your home?

13 A Well, right now most of the things are torn
14 down, but in the urban renewal district, it's in a
15 poor neighborhood. I happened to be just inside of the
16 residential section. For instance, Water Street was all
17 torn down, a poor section, where I was born. That was
18 tenement houses and that's all been torn down now. It
19 is cleared by urban renewal. The Corwin family, Mrs.
20 Monell, a member of that family -- her maiden name --
21 they lived across the street from us.

22 Q What kind of house is it that you live in?
23 Can you tell us?

24 A What kind of a house I live in?

25 Q Yes.

1
2 A I live in an old fashioned house in the
3 neighborhood. We have renovated it to take care of
4 bigger funerals. I have a mortgage on it. I bought
5 it during the depression for \$8500. I had a mortgage
6 on it at one time for \$2300 -- \$23,000.

7 Q There still is some balance on the mortgage?

8 A Yes.

9 Q As I remember, you stated that the business
10 is on the lower levels and you live upstairs.

11 A Yes. I made an addition on the house that
12 I bought. I outgrew it and put an addition on. That's
13 why I had to go to the bank and get money to put this
14 addition on.

15 Q You have cars in the business that are
16 used to transport morners?

17 A Yes.

18 Q Are those the same cars you use for
19 pleasure?

20 A Yes.

21 Q For transportation?

22 A Yes.

23 Q When you occasionally need it; is that right?

24 A Yes, sir.

25 Q Did there come a time when you handled the

1 burial of Mr. Grant's father or mother? I don't remember
2 which.
3

4 A His mother.

5 Q His mother?

6 A Yes.

7 Q Did Mr. Grant ever pay you for that funeral?

8 A No, Mr. Monell.

9 Q Mr. Monell.

10 A Mr. Monell's mother.

11 Q I see.

12 A I misunderstood you. You said Mr. Grant's.

13 Q Mr. Monell's mother.

14 A Mr. Monell's mother.

15 Q I'm sorry.

16 Was that ever paid for?

17 A No.

18 Q Is that still owing?

19 A Part of it.

20 Q While we are on the subject, Mr. Doulin,
21 can you tell us about what your total net worth is?

22 A Yes. I have a bank account in the Columbus
23 Trust Company that I think is around \$2800, I have a
24 checking account in the Highland First -- Highland --
25 National Bank of Highland, I guess they call it. I have

1 gwjw Doulin - direct 1172
2 a checking account which is right now quite a bit over-
3 drawn.

4 Q How about your wife?

5 A My wife has a savings account in the Highland
6 National Bank. One is the Bank of the Highland, the
7 other is the Highland National Bank

8 Q What is the approximate balance in that
9 savings account?

10 A Well, Emma had an automobile accident. She
11 hurt her back. I think the balance in that bank -- of
12 course I borrowed -- many times I had to put it up for
13 collateral.

14 MR. SCHWARTZ: I object to all this.

15 THE COURT: Yes.

16 A About 3,000.

17 THE COURT: It is the amount.

18 I will direct the jury to disregard any
19 comments other than those in response to the question.
20 The question was how much your wife has in the bank,
21 and now I think you have answered about \$3,000.

22 THE WITNESS: About \$3,000, yes.

23 Q Any other bank accounts either held by your
24 wife or yourself?

25 A No.

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Q Any other property that either of you own?

A Yes.

Q Please tell us about it.

A Well, up in what they call the Basherkill Wetlands, I guess they call it -- it's up near Wurtsboro -- I'm in partnership or we have a corporation with my wife and Judge Mazzeo and his wife and we owned sixty-six acres up there that I bought for \$36,000, \$6,000 down and a \$30,000 mortgage, and I was with another man by the name of Mr. Edge. At that time he came to me and asked me to go in with him.

MR. SCHWARTZ: I object again. The question was what other property he had.

THE COURT: Yes, sixty-six acres near Wurtsboro. I guess that answers the question.

Q You put \$6,000 down or was that the total?

A I put \$3,000 down and Mr. --

Q Your partner put down the other \$3,000?

A Yes.

THE COURT: There is a \$30,000 mortgage?

THE WITNESS: Right.

Q How long have you held that property?

A I'd say six years.

Q Is it improved property? Is there anything on

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2 it?

3 A Nothing on it.

4 Q Does it produce income?

5 A No.

6 Q You pay taxes on it in the meantime?

7 A Yes.

8 Q Is this for investment?

9 MR. SCHWARTZ: I object again, your Honor.

10 This is really going far afield.

11 THE COURT: I will let him continue.

12 Was it for investment?

13 THE WITNESS: Yes. When I say investment,
14 Judge, can I explain it, that we hope to develop it.

15 THE COURT: You hope to develop it, all right.

16 Q Have you ever developed it since then?

17 A No.

18 Q Was it your practice that during the winter
19 months that you took a vacation?

20 A Every year.

21 Q Approximately when?

22 A I leave on the 13th or the 15th of February
23 and return around the 1st of April.

24 Q How do you get there?

25 A By car.

Q Do you go with anyone?

A For a long time I went with a family by the -- with Levy, Phil Levy and his wife. We went down for about, oh, maybe twenty years or so, and then his daughter got married and bought a place in Florida. He used to go visit them, and we went by ourselves, my wife and I.

Q What kind of a place do you stop at?

THE COURT: Let's find out where.

Q Where?

THE COURT: It seemed to be south. I don't think he identified it.

A First it was Jueno Beach.

Q Where is it --

A Jueno Beach.

Q -- located?

A Is north of Riviera. The place was known as Surf Cottages, \$42 a week.

Q Where is that with respect to some of the big cities in the area?

THE COURT: Is it on the East Coast or the West Coast?

THE WITNESS: Palm Beach. It's north of Riviera and north of West Palm Beach.

Q What was this, a motel?

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2 A It was little cottages there, little wooden
3 cottages that since have been torn down. Now they are
4 big condominiums.

5 Q Did you go down on your annual vacation in
6 February of 1971?

7 A Yes.

8 Q Whom did you go down with?

9 A We went ourselves, my wife and I.

10 Q You drove down?

11 A Drove down.

12 Q Did you --

13 A At that time we went to Dania.

14 Q Where is Dania?

15 THE COURT: That is north of Miami, isn't
16 it?

17 THE WITNESS: Yes. That's south of
18 Fort Lauderdale, about ten minutes from Fort Lauderdale.

19 Q What kind of a place did you go to in Dania?

20 A I go to what they call -- known as Lodgest
21 Motel. It's a family affair. A man and his wife and
22 his daughter run it. I pay \$85 a week for -- there's
23 no telephone there. I pay \$85 a week for a little
24 burner. They put a burner and bathroom, a small little
25 bench like a kitchen and a bedroom.

Q That's for the two of you?

A That's for the two of us.

Q Is it approximately \$6 a head per night for the two of you; is that right?

A About that.

Q Did you have a telephone in your room?

A No telephone in any room.

Q Were there facilities for cooking in the room?

A No, they give you -- the room that we had, they give you a little -- two burner gas thing that's hooked up to the gas.

Q In traveling down there did you go directly in one trip or did you make stops on the way?

A We made stops.

Q Were they always about the same or did you vary your stops?

A We varied. Sometimes I couldn't get away from Newburgh maybe until 10:00 o'clock in the morning and we made maybe to around Washington or Baltimore and then we would stop. The next day go on down maybe to North Carolina. We took our time.

Q Then eventually you would get to Dania?

A Dania.

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2 Q And then you stayed there for a month, five
3 weeks?

4 A Stayed there for sometimes -- by the time
5 you got back home, it would be five weeks or so.

6 Q What time did you return?

7 A Generally around the 1st of April.

8 Q Sometimes a couple of days later?

9 A Sometimes later. We stopped in Palm Beach.
10 We have a friend there that has a home and we are his
11 guest. We stop there for a couple of days.

12 Q Do you remember when you got back in April
13 of 1971?

14 THE COURT: Do you remember when you got
15 back in 1971?

16 MR. PLATZMAN: Thank you, sir.

17 A About the same time, around April 1st.

18 Q Can you give us any better date than that?

19 A The 1st or 2nd. I don't know. It was
20 around that time.

21 Q All right.

22 Mr. Doulin, you have been sitting in this
23 courtroom throughout this trial?

24 A Yes.

25 Q Do you remember there was testimony by Florence

York Hall?

A Yes, sir.

Q And by Richard Monell to the effect that
sometime prior to the March 26th sentencing --

A Yes, sir.

Q -- that you were given 14 or \$1500?

MR. SCHWARTZ: Objection, your Honor.

THE COURT: Sustained.

Q Do you remember hearing Florence York
testify?

A Yes.

Q Were you in your funeral home prior to
March 26, 1971 and receive an envelope with money?

A No.

Q Where were you on March 26, 1971?

A Well, I could have left Dania and probably
been in -- up around Virginia, Virginia Beach. We
stopped there a couple of times.

Q Where were you prior to March 26th but
after March 5, 1971?

A After March 6th?

Q After March 5th but before March 26th.

A Dania.

Q I show you Government's Exhibits 20, 21 and

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2 22.

3 I ask you to look at the Exxon gasoline
4 slips of this exhibit introduced into evidence by the
5 government.

6 MR. SCHWARTZ: May we have an exhibit number,
7 your Honor?

8 THE COURT: Yes. You better denominate
9 which of those exhibits you are referring to.

10 MR. PLATZMAN: The government had them
11 classified by company. I don't remember which one was
12 Exxon.

13 THE WITNESS: Esso.

14 MR. PLATZMAN: It used to be Esso.

15 THE COURT: That I believe is 21.

16 Q Would you look at Exhibit 21.

17 THE COURT: I believe Government's Exhibit
18 21 are the Exxon credit slips. The witness is now
19 holding that exhibit.

20 Q I call your attention to three slips dated
21 February 24, 1971 where some purchases were made.

22 Do you see those slips, Mr. Doulin?

23 A I see one here that says January 10th.

24 Q Let's get down to --

25 A There's one here that says --

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2 Q Maybe you can locate it easier let's say for
3 the \$6 one.

4 MR. SCHWARTZ: These exhibits are in
5 evidence. If Mr. Platzman wants to point to a particular
6 one to move things along --

7 THE COURT: The witness seems to have
8 difficulty in locating the slip. He has a number of
9 slips here.

10 A There's one for March 10, '71, very blurred.

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2 Q You will find one for about \$6 in February.

3 A February 24.

4 Q Right. That is for \$6?

5 A \$21.53.

6 Q Yes, \$21.53 and one for how much?

7 A One for \$124.01.

8 Q And is there a third one?

9 A \$8.05.

10 MR. SCHWARTZ: I object to going through each --

11 A February 28.

12 THE COURT: I understand your objection but I
13 will let him try to cover the matter in his own way.

14 Q Let's take the two that you just referred to.

15 \$21.53 and \$124.01.

16 What is the date of those?

17 A February 24, 1971.

18 Q And where were these purchases made?

19 A I can't see.

20 THE COURT: The exhibit's in evidence and it
21 seems to me you can read from what you have, counsel.

22 MR. PLATZMAN. It is very difficult to read.

23 THE COURT: I will read it.

24 MR. SCHWARTZ: Your Honor, may we approach the
25 bench for a moment?

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Doulin-direct

2 THE COURT: Yes.

3 (At the side bar)

4 MR. SCHWARTZ: I make this request with all due
5 respect to the Court.

6 These are exhibits which have been in evidence
7 for some time. They are the subject of a stipulation between
8 counsel. If Mr. Platzman wants to use them, as obviously
9 he has a right to do in an adversary way, I ask he do it
10 and the Court not be the one to read the document to the
11 jury.

12 THE COURT: Yes, I think that is an appropriate
13 request.

14 Mr. Platzman, I suggest that you can move the
15 matter along and still advocate your cause by handling
16 these exhibits which are in evidence by yourself.

17 MR. SCHWARTZ: Thank you, your Honor.

18 MR. PLATZMAN: I will try to follow your Honor's
19 direction.

20 (In open court)

21 Q I show you photoprints of two slips, February
22 24, 1971, \$21.53 and \$124.01.

23 A Yes.

24 Q Where were those purchases made, what city?

25 A I can't see it.

2 MR. SCHWARTZ: My objection is because I don't
3 know whether Mr. Doulin is reading from a document to
4 give the answer or his own recollection.

5 THE COURT: Mr. Doulin has looked at the document
6 and said he can't see it.

7 THE WITNESS: I can't see where it is purchased.

8 THE COURT: So you don't know at the moment from
9 anything you have in your mind or elsewhere where those
10 purchases were made; is that correct?

11 THE COURT: No.

12 THE COURT: Next question.

13 Q Look at February 24, 1971, for the \$21.53.

14 Can you tell us whether or not it was purchased
15 in Calandria in Newburgh?

16 MR. SCHWARTZ: I am not sure I heard the ques-
17 tion.

18 THE COURT: He asked if one of the other slips
19 was purchased in Calandria, Newburgh.

20 MR. PLATZMAN: At Calandria in Newburgh, I
21 guess.

22 THE WITNESS: It looks like.

23 Q How about the \$124 item?

24 THE COURT: The exhibits are in evidence, counsel.
25 Why don't you look at them? If you can't read them, then

1 gw:mg 4

Doulin-direct

2 you can show them to the witness.

3 If he can't read them, I am afraid that's about
4 as far as we can go.

5 Q I show you a photoprint of a slip at the bottom
6 of the page and ask you whether that indicates a purchase
7 of \$6 at Newburgh on February 24, 1971?

8 MR. SCHWARTZ: Objection.

9 THE COURT: Sustained.

10 The exhibit speaks for itself, and if it does
11 not, if it can't be read by you, then you can ask the
12 witness if he can read it. If it can be read by you, that's
13 it.

14 MR. PLATZMAN: May it please the Court, while
15 this is in evidence--

16 THE COURT: It is in evidence. The witness
17 need not speak for it.

18 MR. PLATZMAN: I am trying to identify where this
19 man was over this period. I would like to use this exhibit
20 for that purpose.

21 THE COURT: If he doesn't know where he was, you
22 can use anything in the world to refresh his recollection.
23 Let's work along on this in an appropriate fashion.

24 Counsel wants to know, sir, where you were on
25 February 24, 1971.

2 Where were you?

3 THE WITNESS: I really don't know.

4 THE COURT: Do you have any way of ascertaining
5 where you were?

6 THE WITNESS: On my way to Florida or I could
7 be in Florida at the time.

8 MR. PLATZMAN: Would your Honor excuse me for a
9 moment?

10 THE COURT: Yes.

11 (Pause)

12 Q Mr. Doulin, do you remember where you were on
13 February 26, 1971, without refreshing your memory from
14 anything?

15 A February 26 I would be in Florida.

16 Q I ask you to look at this gasoline slip from
17 Gulf--

18 THE COURT: He has answered the question.

19 MR. PLATZMAN: I am asking him to refresh his
20 memory. I want to be able to straighten him out.

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2 THE COURT: Under the rules you can impeach
3 your own witness.

4 MR. PLATZMAN: Just to correct his memory.
5 He is speaking from memory, and I am asking him to refresh
6 his memory.

7 THE COURT: No colloquy is necessary.

8 Q I show you this slip dated February 26, 1971,
9 for \$17.63 of Gulf --

10 MR. SCHWARTZ: Which exhibit is that, please?

11 MR. PLATZMAN: 22.

12 Q -- and ask you if you look at the state
13 involved, does that refresh your recollection as to what
14 state you were in?

15 A Well, sir, I can't see the state. My eyes
16 are not that good. It seems to be blurred out.

17 THE WITNESS: Judge, do you want to look at
18 it?

19 THE COURT: No, I will leave it to counsel.

20 Q I ask you to look at this again and ask you
21 whether this doesn't show Virginia?

22 MR. PLATZMAN: Mine aren't that good either.

23 THE COURT: A juror is stretching.

24 A Yes.

25 THE COURT: The witness answers yes.

1 GW2 Doulin-direct 1188
2 A It looks like Virginia. It is still blurred.

3 Q Do you remember whether you made a stop in
4 Virginia on that trip?

5 A I made stops through Virginia, Carolinas,
6 all the rest of them.

7 Q I am going back to Exhibit 21. I ask you
8 whether you remember where you were on February 28, 1971.

9 A February 28th, that would be in Florida.

10 Q I show you the third slip on Government's
11 Exhibit 21 on this page showing a purchase of \$8.05 and
12 ask you whether it refreshes your recollection as to
13 what state you were in?

14 THE COURT: In what date?

15 MR. PLATZMAN: On the February 28th date.

16 MR. SCHWARTZ: I object to refreshing his
17 recollection.

18 THE COURT: He has already recalled he was
19 in Florida. He is giving his client a chance to
20 change his testimony, and I will permit it.

21 Q Were you in Virginia at that time?

22 A It looks like Virginia. Roanoke, something
23 like that.

24 MR. PLATZMAN: Will counsel concede that was
25 a purchase in Virginia?

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MR. SCHWARTZ: No such concession, your Honor.

THE COURT: The exhibits speaks for itself.

Q Do you remember where you were on March 6,
1971?

A I imagine I was in Florida at the time.

Q Do you remember purchasing gasoline at Palm
Beach, Florida, for \$8.05?

A I don't remember buying it at the time, but
I imagine I did. I was in Palm Beach.

Q I show you the first slip on this sheet in
Government's Exhibit 22 and ask you whether that refreshes
your recollection as to whether you purchased gas on
that day in Florida?

A Yes. This is very clear. I wish they were
all like that.

THE COURT: What date was that?

MR. PLATZMAN: March 6.

THE WITNESS: Yes.

THE COURT: All right.

Q Now, do you remember where you were on March
20, 1971?

A In Florida.

Q Do you remember buying gas at Hollywood,
Florida, for \$7.00 from Esso on March 20, 1971?

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A Yes.

THE COURT: Hollywood is relatively near
Dania?

THE WITNESS: Right next to it.

Q Do you remember where you were on March 1,
1971?

A I imagine I was in Florida.

MR. SCHWARTZ: I am sorry.

THE COURT: "I imagine I was in Florida
March 1st."

Q Do you remember purchasing gas at Jacks,
Florida, on March 1, 1971, from Texaco for \$5.80?

A I wouldn't know the name of the place, but
if I needed gas I bought it.

Yes.

Q Do you remember where you were on March 10,
1971?

A I imagine I was in Dania.

Q Do you remember purchasing gas from Texaco
at Dania, Florida, for \$5.50?

A Right across the street from the lodge.

Q Is that where you were staying?

A Yes.

Q I show you this top slip. Was that the

1 purchase slip that you had?

2 A Yes.

3 MR. SCHWARTZ: Which exhibit number is that,
4 please?

5 MR. PLATZMAN: Still the same exhibit, 20.

6 Q Now, where were you on April 1, 1971, if you
7 remember?

8 A Probably on the way home.

9 Q Do you remember purchasing gas in Raleigh,
10 North Carolina, from Texaco on April 1, 1971, for \$6.50?

11 A Yes.

12 Q I show you this slip.

13 THE COURT: He remembered it.

14 Q Do you remember purchasing gasoline on
15 April 1, 1971, in Jacksonville, Florida, for \$6.00?

16 A I could have. I don't remember.

17 Q Was Jacksonville en route --

18 A On the way home.

19 Q On the way home. May I show you this slip
20 and ask you whether that refreshes your recollection
21 whether you bought gas in Jacksonville?

22 A That's my signature. That's what it says.

23 Q April 1st?

24 A Yes.

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Doulin-direct

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Q For \$6.00?

A Yes.

Q Now, before you started on your trip on April 1st, do you recall purchasing gas at Vero Beach, Florida, for \$6.85 from the Gulf station?

MR. SCHWARTZ: Objection. There has been no testimony about starting on a trip.

THE COURT: I didn't hear anything about it either. I have him purchasing gas on that date at two other locations.

Why don't you now ask him if he purchased any gas on that date in a third location.

Q Do you recall whether you purchased gas at Vero Beach?

A I would only know by the slip, that's all. I went up through Vero Beach going home. Yes.

Q And for \$6.85 at a Gulf station?

A Yes.

Q And where is Vero Beach with respect to Dania? Is it north of it?

A North. Vero Beach is where the baseball team practices.

Q Is Jacksonville beyond that or before?

A Beyond it.

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Doulin-direct

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Q So you would get to Vero Beach before you
would get to Jacksonville?

A Yes.

Q And that purchase was for \$6.85 from Gulf,
is that right?

A Yes.

gwjw 1

Doulin - direct

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Q Do you remember purchasing any gasoline?

THE COURT: You are leading him.

That is not too meaningful. Perhaps you can try it in a different form.

Q Can you tell us where you were on April 2nd, the exact location, 1971?

A Only if I look at the slip. I don't remember where I was.

THE COURT: You do not recall?

THE WITNESS: No.

Q Do you remember purchasing gasoline in Mount Pleasant, South Carolina on April 2nd from an Esso station for \$7.30?

A I can identify my signature.

Q Look at that slip and I ask you whether that would refresh your recollection.

A Yes.

THE COURT: That was Mount Pleasant, South Carolina?

THE WITNESS: Yes.

Q Let's go back just a bit. I'm sorry I skipped this one.

Do you remember where you were on April 1st, 1971 without refreshing your memory?

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A I think I already testified.

Q Do you remember being in Raleigh, North Carolina --

THE COURT: You started with Raleigh. Raleigh, Jacksonville and Vero Beach.

THE WITNESS: Coming home.

Q Then do you remember where you were on April 3, 1971 without refreshing your memory from these sheets?

A I should be hitting Virginia by that time.

Q Do you remember purchasing gas on April 3rd at Diamond Springs Esso station for \$5.21?

A Is that? Virginia?

Q In Virginia.

A Yes.

THE COURT: Where is Diamond Springs?

THE WITNESS: Virginia.

Q Do you remember being in New Castle, Delaware on April 3, 1971?

A Yes.

Q Do you remember purchasing gasoline at a Gulf station on April 3, 1971 at New Castle, Delaware for \$6.20?

MR. SCHWARTZ: I didn't hear an answer, your

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Doulin - direct

1196

Honor.

THE COURT: He said yes originally.

A Yes, that's my signature.

Q That's your signature?

A Yes .

THE COURT: You do recall that?

THE WITNESS: Yes.

Q Do you remember where you were on April 5,
1971?

A I wouldn't remember.

Q Do you remember purchasing gasoline in Newburgh
on April 5, 1971 at Collandria? Is that the name of
the station?

A Yes. I buy most of my gas in Newburgh.

Q A purchase of \$5.95?

A Yes.

THE COURT: Do you recall that?

THE WITNESS: Judge, when you need gas --
I can't recall the date.

THE COURT: But by looking at the credit
slip --

THE WITNESS: Yes.

Q When you were in Florida did you speak with
Mrs. Grant at any time?

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Doulin - direct

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A Never.

Q Did you call her?

A No.

Q Did she call you?

A No.

Q Did you speak with any other member of her family?

A No.

Q Either by her calling you or your calling her?

A No, sir, never.

Q Mr. Doulin, just one final question.

Can you tell us whether at any time through anybody, directly or indirectly, you received or agreed to receive any money from anyone, either for yourself or for the Republican party, in order to fix Mr. Monell's sentence on March 26, 1971?

A Never.

MR. PLATZMAN: I have no further questions.

THE COURT: You may cross examine, Mr. Schwartz.

MR. SCHWARTZ: Thank you, your Honor.

CROSS EXAMINATION

BY MR. SCHWARTZ:

Q Mr. Doulin, do you recall earlier today Mr. Platzman asking you certain questions and answers and asking you whether those were truthful answers that you had given to those questions?

A Yes, I do.

Q Do you recall Mr. Platzman asking you or reading these questions and answers to you:

"Mr. Doulin, has anyone ever at any time offered you any money or anything of value and you say that in its broad sense, to try to influence your conduct in any way whatsoever on anything, now that's a broad question and I don't mean to be unfair about it."

And do you recall your answer to that question?

A Yes.

Q What was it?

A No.

Q No one ever offered you anything of value to influence your judgment?

A No.

Q Were you in court earlier today when Monsignor Markowski testified?

A I certainly was, yes.

1
2 Q Do you recall that he testified he was
3 present when people offered you things?

4 A Yes.

5 Q Do you know what he was referring to?

6 A Could be referring to vegetables or anything.
7 I don't know what he was referring to.

8 Q It could have been vegetables, did you say?

9 A It could be anything. I don't know. I don't
10 remember anybody offering me in front of the Monsignor
11 or anyone else.

12 Q You think his recollection was faulty?

13 A It had to be. Nobody ever offered me anything.

14 Q You don't think it ever happened then if he
15 said it did?

16 A Never happened as far as I know.

17 Q Do you recall telling Mr. Platzman on your
18 direct examination how long your Florida vacation usually
19 lasted?

20 A Yes.

21 Q How long did you tell him?

22 A Five weeks.

23 Q Is that a fairly routine or usual vacation
24 for you?

25 A Well, the last couple of years it was a little

longer, six weeks, I guess, by the time I get home.

Q How long was it in 1971?

A Five or six weeks.

Q What time did you usually leave for this vacation?

A Around the 15th of February.

Q Six weeks would take it to the end of March.

A No, the 1st of April.

Q You usually left around the 15th; is that what you said?

A Yes.

Q How long have you been following this routine that you would leave in the middle of February?

A Well, last year I had to wait until around the 28th of March because I had been invited to a Bar Mitzvah of the cantor's son and I did delay my vacation last year. Before that the pattern was set, around the 15th for many years.

Q How long did you stay in Florida?

A I stayed there a month or five weeks.

Q Mr. Doulin, do you remember appearing in the grand jury on February 12, 1975?

A Yes.

Q I'm going to read from page 9, line 11 through

13.

"Q When you went to Florida each February, how long did you stay there?

"A Well, sometimes for three weeks, sometimes for a month. That's about it."

Do you remember giving those questions and those answers?

A Yes.

Q Were those true answers? Was that a true answer to that question?

A I stayed in Florida. I came home. It took me six days to come home.

Q You did not include it in that time in your answer, six days?

A It depends how long I was in Florida. I told you a month or so. Whatever I told you, that's what it was.

Q Was it three weeks to a month? Is that what you are saying?

A Yes, it could be.

Q How long did it take you to get down to Florida?

A Well, sometimes a week, sometimes six days. My wife is bothered with cramps in her legs. We don't

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drive too far in any one given day.

Q You usually drove?

A Drove, yes.

Q In 1971 what kind of a car were you using?

A In 1971?

Q Yes.

A What kind of a car?

Q Right.

A I think it would be a Cadillac.

Q How many miles were you getting to the gallon?

A How many miles --

MR. PLATZMAN: I object to this, your Honor.

THE COURT: You went into a lot of gas purchases on your direct examination. I suppose the government is entitled to a few on cross.

A I will answer it. How many gallons we get?

Q How many miles were you getting to a gallon, if you recall?

A You get on some Cadillacs fourteen miles on the run and in the cities you get around ten. You got more in those days than you do now I imagine with the gas think you have.

Q Do you recall what mileage you were getting in 1971?

1 A I never checked it. No, I do not.

2 Q You were in court when Mrs. Grant testified
3 that she went to you for favors from time to time?
4

5 A Yes, indeed.

6 Q How often did she go to you for favors,
7 if you recall, in 1971?

8 A In 1971 -- I don't know the dates -- but I
9 know she did come to me about adopting two children that
10 belonged to her grandson. I think it was two. I told
11 her she would have to get a lawyer because I wasn't
12 that well versed, and if she is going to adopt children,
13 you have to go to a lawyer.

14 She and her son-in-law came to me another
15 time. He was having trouble with Mr. Daly's union,
16 Teamsters. It seems that he had worked there and was
17 being denied his pension. He asked me if I would talk
18 to Mr. Daly.

19 I called Mr. Daly on the phone at that time
20 and he said it would be taken care of. I never heard
21 any more from him. Eventually it was taken care of.

22 Q You called Mr. Daly, you said?

23 A Yes.

24 Q Are those the only two occasions that you
25 recall where Mrs. Grant came to you to request a favor

in 1971?

A In 1971, that's all I recall.

Q What about before 1971, did Mrs. Grant come often?

A Mrs. Grant had been in my office many times, but not always for favors. She come in to say hello. She was in Newburgh. She stopped in and say hello.

Q Did she ask for other favors from time to time?

A In the last year she asked me what would be the procedure for getting an ice cream stand, her son-in-law and her daughter getting an ice cream stand up where she lives.

I told her again she better go get a lawyer, you have to get a variance, so forth and so on.

Q I asked you before 1971.

A I can't remember that.

Q You don't remember?

A I don't.

Q Any other favors at any time that you recall that she --

A Not that I recall.

Q Those are the only ones that stand out in your mind?

1
2 A Right.

3 Q Am I correct that from these credit cards
4 that you have been looking at, your testimony is that
5 that has to do with your Florida vacation, is that right?

6 A Yes.

7 Q On March 5, 1971 when Richard Monell was
8 being sentenced for the first time, you were on vacation
9 in Florida?

10 A Yes.

11 Q Mr. Doulin, how long did you know Abraham
12 Weissman?

13 A I knew Abe maybe ten years, fifteen years.

14 Q While he was district attorney, how often
15 did you see him?

16 A Well, we had what we call a round table
17 every Friday where judges, DA's, county employees
18 attended. It is a Dutch-treat affair. Many times Mr.
19 Weissman came to the round table luncheon. Everybody
20 pays their own way.

21 Q How often would you see him would you say --

22 A Sometimes he come on a Friday, sometimes he
23 wouldn't. He was there quite often.

24 Q Did you see him any other time?

25 A He stopped in my office once in a while. I'm

right near the courthouse.

Q In Goshen?

A Yes.

Q Did you stop at his office?

A I was in the new building I think once when I took a tour through there.

Q Otherwise you never went to his office?

A No.

Q Did you ever go into that building to visit other people in the building, that is, the building in which the district attorney's office was located?

A Yes, I went in there to see Judge Sweeney, but that's in another part of the building, another -- that's separate. It's another wing of the building, Judge Sweeney.

Q Did you ever go to see Judge Ingrassia?

A I have met Judge Ingrassia. They are right by one another. Their offices are together.

Q Did you ever go to Judge Ingrassia's chambers?

A No, I don't think I was ever in his chambers.

Q Judge Isseks?

A I have been in his chambers, yes. They are right next door to one another.

Q In 1971 how often do you think you went to

visit Judge Isseks, if you did?

A I wouldn't have any recollection.

Q Can you give us some idea?

A I can't give you any idea because I don't recall.

Q You don't recall whether you ever did?

A Beg pardon?

Q You don't recall whether you ever did go to see him?

A I may have, but I don't recall 1971.

Q What about 1972?

A I wouldn't know that either.

Q How about more recently, how often do you see him?

A Well, I haven't seen Judge Isseks or Judge Ingrassia -- I haven't been in the county building I would say for six months.

Q But you have been in Judge Isseks chambers; is that correct?

A Yes, and Judge Sweeney's chambers and Judge O'Gorman's chambers.

Q Are they all in the same complex in Goshen?

A Yes, connected to one another.

Q Do you recall when Mr. Cohen and Mr. Mauriello

1 were both seeking the position of district attorney?

2 A Yes, I do.

3 Q Was Mr. Weissman seeking it at that time
4 also?

5 A Not that I know of. He never mentioned
6 it to me.

7 Q You don't have any recollection whatsoever
8 of Mr. Weissman discussing that with you?

9 A No.

10 Q When an individual who was seeking a position
11 withdraws from a race for the position, do they usually
12 notify the county chairman? In this case let's talk
13 about the district attorney.

14 A No, they don't have to. They just don't
15 have their names presented at the convention.

16 Q Do you recall whether Mr. Weissman ever
17 communicated to you concerning his withdrawal from the
18 race for the nomination for district attorney in the
19 Republican party in 1971?

20 A He was not in contention.

21 Q He wasn't in contention at all?

22 A You mean the same year that Mauriello and
23 Cohen was running?

24 Q Yes.

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2 A Abe Weissman wasn't even thought of.

3 Q You are certain about that?

4 A Beg pardon?

5 Q You are certain about that?

6 A Pretty sure, yes.

7 MR. SCHWARTZ: May I have this marked
8 Government's Exhibit 38 for identification.

9 (Government's Exhibit 38 marked for
10 identification)

11 (Pause)

12 Q Mr. Doulin, did Abraham Weissman ever go to
13 your home?

14 A Not to my home. He may have been in the
15 funeral parlor.

16 Q In the same building?

17 A Yes.

18 Q For anything other than a funeral, if you
19 recall?

20 A He may have stopped in to make a friendly call.
21 A lot of other people did.

22 Q Mr. Doulin, let me show you what has been
23 marked Government's Exhibit 38 for identification and
24 see whether it refreshes your recollection as to whether
25 Mr. Weissman was a candidate for the district attorney's

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Doulin - cross

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position in 1971?

A Yes.

Q It does?

A Yes.

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Q Do you recognize that?

A I recognize it.

Q Is that something you received?

A I don't remember receiving it, but I know it was in contention, so he withdrew before it went to the convention.

Q So you do remember he was a candidate?

A I don't remember. I don't even remember him being a candidate at that time. After I read this letter. I don't remember him being in contention because it was only Jerry Cohen and Mauriello, which I have testified.

Q I asked you whether he was seeking it.

A As far as I know, no, I don't remember this letter.

Q Having looked at this, do you recall now?

A No.

Q Do you recognize that letter?

A No, I don't.

Q You have never seen it?

A No.

Q Have you ever seen the original of it?

A No.

Q You are sure?

1 GW2

Doulin-cross

2 A I'm positive.

3 Q It doesn't refresh your recollection?

4 A Not a bit.

5 Q When you say he wasn't in contention, Mr.
6 Weisman wasn't in contention for the position of district
7 attorney, does that mean he wasn't seeking it at all?

8 A He didn't ask me anything about it. I told
9 you there was only two, Mauriello and Cohen. Mauriello
10 was nine years a district attorney, Cohen was fifteen
11 years in, and Weisman wasn't even considered because he
12 was only in there three years.

13 I probably told him I wouldn't even con-
14 sider him. Maybe he wrote that letter to my headquarters,
15 I don't know.

16 Q Take another look at it. Maybe it will help
17 you remember.

18 A I looked at it. I still don't remember.

19 Q Do you want to look at it again?

20 A No. I will look at it if you want me to.
21 Now I have looked at it.

22 Q And you don't remember?

23 A I don't remember.

24 MR. SCHWARTZ: This would be a convenient
25 breaking point.

1
2 THE COURT: I note it is one minute to five.
3 I had anticipated our recessing today at 5:00 o'clock.

4 Ladies and gentlemen, the case is moving
5 along. As you go home tonight, I would admonish you
6 one more time, please do not discuss the case among your-
7 selves nor remain in the presence of any other person
8 who might be discussing the case. If you learn anything
9 about the case from any source outside of this courtroom,
10 you are directed to report the matter to me at once when
11 we reassemble tomorrow morning.

12 Finally, please keep an open mind on all
13 facets of the case until the case has been concluded and
14 given to you following my charge.

15 I should like to have the jury reassemble and
16 prepared to resume hearing this case tomorrow morning
17 at 9:30 A.M.

18 Can you all make it?

19 Fine.

20 I direct the jury first to be hereready to
21 proceed to hear this case at 9:30 A.M., and I would also
22 instruct you to tell your family that you may be home
23 late tomorrow. I cannot tell you what time, but I do
24 suggest to you that if you do leave very late we will
25 see to it that you get home; but I do not want your

1 GW4

Doulin-cross

2 families to worry if you do not appear at what might to
3 them seem to be a customary hour. So I'll ask you just
4 to tell your families that you may be home late tomorrow
5 night.

6 The jury is excused. You are directed to re-
7 turn tomorrow at 9:30 A.M. Goodnight, everyone.

8 (Jury leaves courtroom.)

9 THE COURT: You may step down, Mr. Doulin.

10 MR. SCHWARTZ: Your Honor, I have an applica-
11 tion with respect to Exhibit 38 for identification.

12 I would like the Court to look at it. It
13 is a copy of a letter which was sent to Mr. Doulin.
14 As to the original, of course, if it is anywhere it
15 would be in Mr. Doulin's possession. Since he has testi-
16 fied and is subject to subpoena, I submit, I ask that
17 he produce the original.

18 THE COURT: Yes.

19 Mr. Doulin, I would ask that you search your
20 records and if you have the original of a letter dated
21 February 11, 1971, addressed to you from Abraham J.
22 Weissman, I direct that you produce it when you return
23 tomorrow.

24 THE WITNESS: Judge, I can tell you now I
25 haven't got the original.

1 GW5

Doulin-cross

2 MR. SCHWARTZ: I think he should have to
3 make a search for it.

4 THE WITNESS: What would I do, go back 70
5 miles to Newburgh, look in my files, I don't have it, and
6 come back 70 miles again tonight?

7 MR. SCHWARTZ: Somebody should make a search
8 for it. We are entitled to the original, if it exists.

9 THE COURT: I will ask you to make a tele-
10 phone call up to Newburgh, have a search made and have
11 the report of that search conveyed to you so that you may
12 convey it to the Court tomorrow morning.

13 THE WITNESS: Very good.

14 THE COURT: You can make a note relative to
15 this letter.

16 MR. SCHWARTZ; Perhaps I will give it to
17 Mr. Platzman.

18 THE COURT: Is there anything further?

19 MR. SCHWARTZ: No, your Honor.

20 THE COURT: You may step down.

21 Is there anything further, gentlemen?

22 MR. SCHWARTZ: No, your Honor.

23 THE COURT: Court is adjourned. You are
24 directed to return tomorrow morning at 9:30.

25 (Adjournment to 9:30 A.M., November 14, 1975.)

WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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John J. Reilly	1047	1053	1056	
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Thomas A. Hadaway	1140			
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William D. Ryan	1157	1162		

*done to effect*EXHIBIT INDEX

<u>Court</u>	<u>Identification</u>	<u>In Evidence</u>
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10		978
11		981
12		989
<u>Government</u>		
26-A		985
37	1054	
38	1209	

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UNITED STATES OF AMERICA

v.

75 Crim. 630

WILLIAM E. DOULIN

November 14, 1975
9:40 a.m.

(Trial resumed)

(In the robing room)

THE COURT: Mr. Jossen.

MR. JOSSEN: Your Honor, at this time the Government would request that your Honor conduct a voir dire of Juror No. 7 with respect to the notewhich was handed to your Honor yesterday in connection with the testimony of Monsignor Markowski.

The Government's suggestion would be that your Honor conduct a voir dire out of the presence of the attorneys and simply report back to us, perhaps having it transcribed, what the juror actually stated.

MR. PLATZMAN: I don't know. I don't see the necessity for the attorneys -- I don't see that anything could be wrong in having it out of the presence of the attorneys, but I see no advantage.

MR. JOSSEN: Whatever your Honor prefers.

THE COURT: I do believe that a voir dire is appropriate and I would suggest that it be in the robing

1 room in the presence of counsel and I will inquire of
2 the juror in essence that I understand he does know
3 Monsignor Markowski and I will inquire very briefly how
4 he knows him and whether this would influence his judgment
5 in any way in this case here on trial.
6

7 Is that satisfactory?

8 MR. SCHWARTZ: Yes, it is.

9 MR. PLATZMAN: Satisfactory.

10 THE COURT: Bring in Juror No. 7, Miss Kruger.

11 (Mr. Baxter, Juror No. 7, enters the robing room.)

12 THE COURT: Please sit down. How are you this
13 morning?

14 MR. BAXTER: Fine.

15 EXAMINATION OF MR. BAXTER

16 BY THE COURT:

17 Q The reason we asked you to come in is that you
18 indicated to Miss Kruger yesterday, which I appreciate
19 very much, that you knew Monsignor Markowski, one of the
20 character witnesses called by the defendant.

21 A Correct.

22 Q You do know him?

23 A Yes.

24 Q Would you tell us briefly how long and how well?

25 A I have known him several years. I worked with him

1 in the Holy Name Society. I was in charge of bingo when
2 he was pastor of our church.
3

4 Q You are in Rockland County, as I recall?

5 A From New City.

6 Q And he was pastor down there?

7 A He was made monsignor from our parish.

8 Q And then returned to Newburgh?

9 A I think he was sent to the other side of the river
10 and then to Newburgh.

11 Q So you had known him in Rockland County?

12 A He baptized one of my children, and that's why
13 I felt I should make you aware of the fact that I knew
14 him.

15 Q Let me ask you this:

16 Do you believe that the fact that you do know
17 one of the witnesses in this case, a character witness
18 for the defendant, would in any way cause you to be influ-
19 enced either for or against any of the parties, something
20 that you feel might prevent you from being a completely
21 fair and completely impartial juror?

22 A No, I truthfully don't. I don't think it has
23 affected me. I felt it was just another witness, whether
24 I know him or not, and I will weigh the facts.

25 Q In other words, you feel you can approach this

case with the same open mind as you were approaching it when Monsignor Markowski first appeared on the stand yesterday?

A That's right, your Honor.

Q And you feel that you can give both sides, both the Government and the defendant, the same fair trial and fair hearing now that Monsignor Markowski has testified?

A Yes.

THE COURT: Very well.

Thank you very much. If you would return to the other jurors.

One admonition: Please do not discuss with the other jurors the reason you were called in or the questions you were asked here or the answer which you gave.

(Mr. Baxter leaves the robing room.)

MR. SCHWARTZ: Your Honor, the Government sees no reason to excuse the juror.

MR. PLATZMAN: I don't think so.

THE COURT: The juror answered all of the Court's questions in a manner which I considered to be candid. He indicated his relationship with the Monsignor, indicated they had worked together, the Monsignor had baptized one of his children, and indicated nevertheless

that he could be fair and impartial the same as before.

MR. PLATZMAN: Apparently the pastor had moved to another church.

THE COURT: I think I remember something when he was giving his background.

In view of the fact that the juror has answered the questions in the manner which he did, and in view of the statement made by both counsel, Mr. Schwartz and Mr. Platzman, we will continue with Juror 7.

MR. PLATZMAN: As long as we are in the robing room, I have one question that arose in my mind as a result of the memorandum that counsel submitted in connection with the requests to charge. I may be a little early, premature, but as long as we are here it would save time.

I think in it was a request that the jury be charged that they don't have to determine the materiality, that the Court has decided this, and so on.

I ask that since it is a Court determination, materiality, that it not be reviewed with the jury, that the jury should be asked to determine what it has to determine, not what it doesn't have to determine, and that this would have a tendency, from my way of thinking, to perhaps unduly emphasize on some essential portion of this case which the Court has already decided in favor of

2 the Government.

3 If we were to stretch this concept, there are
4 perhaps a dozen legal things that are shown as the trial
5 goes on that the Court has to decide. The Court doesn't
6 instruct the jury it has found in favor of the plaintiff
7 or the defendant.

8 I feel that the jury should be instructed as
9 to the problem it has at hand, to wit, the other two items
10 contained in the Government's brief, the other two being a
11 Court determination which need not be determined by the
12 jury, and therefore they shouldn't be apprised of it.

13 MR. SCHWARTZ: Your Honor, I don't have the
14 requests in front of me, so I don't know the precise
15 language. Off the top of my head, I am a little troubled
16 about not letting the jury know all the elements of the
17 crime.

18 THE COURT: I suggest to you that if the defendant
19 specifically states that one elemtn of the crime is one that
20 he would not want set forth to the jury, it seems to me
21 if his affirmative request were made and granted by the
22 Court, I cannot see that it would be error to not charge
23 materiality. I normally do, and intended to, and believe
24 it would be proper to do so. I have done it in prior
25 perjury cases.

MR. SCHWARTZ: The language which I think is in Request No. 10 seems to be very fair language for the defendant.

MR. PLATZMAN: I think the jury can draw some rather uncomfortable inferences from that. If they don't have to decide this question, and the Court has decided it, the only thing to be put before the jury is what they have to decide.

I don't intend to argue materiality before them in summation, and I don't intend to put any emphasis on it. If it was a factual question, I would have a lot to say about materiality, but since it isn't, I feel this might be prejudicial in their determination.

Here are four things that have to be decided, and already the question of materiality has been found to be legally decided against the defendant.

MR. SCHWARTZ: The problem I have is that those elements are charged in the indictment, and I am afraid of some confusion if the jury is not charged on the elements that are in the indictment. They wouldn't know what to do with them.

MR. PLATZMAN: That is not correct. His Honor can charge them as to what they have to find.

MR. SCHWARTZ: The allegations of materiality are

2 in th indictment and it would be very confusing to send
3 that indictment in to the jury without any instruction
4 whatsoever on a duly empaneled jury or materiality.

5 THE COURT: I note the objection made by counsel
6 to the request that I charge on materiality. I have
7 determined to charge on materiality. I think it would be
8 inappropriate for me to omit one of the elements of the
9 crime and it would be inappropriate for me not to charge
10 the jury relative to that element.

11 Therefore, you have objected to the Court's
12 charging on materiality. Your objection or exception to
13 that portion of the charge is overruled.

14 There is one other thing. Do you have a
15 copy of the short indictment eliminating Count 4, which
16 has been dismissed?

17 MR. JOSSEN: Your Honor, it is in the process
18 of being retyped. We anticipate it should be ready to go
19 in to the jury by the time they are ready to commence
20 their deliberation.

21 THE COURT: It will eliminate Count 4 which has
22 been dismissed.

23 MR. JOSSEN: If I might just add, it has been
24 renumbered so it will show Counts 1 through 7.

25 THE COURT: I will adapt accordingly.

2 By virtue of the nature of the case, I intend
3 in this case to send the indictment in with the jury.
4 It's done frequently in other districts. My usual
5 practice is to wait until the jury requests an indictment,
6 but here, where they must have before them the questions
7 and the answers, it is my intention to send the indictment
8 in to the jury when they begin their deliberations.

9 Accordingly, I will not read the indictment to
10 the jury. I think to both read it, which you have requested,
11 and also to send it in when they deliberate would be
12 inappropriate in this case. I will briefly indicate what
13 the indictment charges, but I will not go through the
14 painful process of reading the document when I have
15 indicated to you that it is my intention to send the
16 document in to the jury room with the jury when they retire
17 to deliberate.

18 MR. SCHWARTZ: I would prefer that it be read.

19 THE COURT: Of course you would. I think to do
20 it twice would be repetitious and unnecessary.

21 Is there anything further, gentlemen?

22 MR. SCHWARTZ: No, your Honor.

23 MR. PLATZMAN: I don't think so.

24 (Continued on next page)

2 (In open court - jury present)

3 THE COURT: Good morning, ladies and gentle-
4 men.

5 I know you were all here promptly at 9:30.
6 We had several matters to take care of and our start seems
7 to be coming up just a few minutes before ten.

8 This is likely to be a reasonably long day.
9 Let me tell you what lies ahead.

10 We will resume in a moment or two with the
11 cross examination of Mr. Doulin, who was on the stand
12 yesterday when we recessed. That will most likely be
13 followed by redirect examination, and I would suggest that
14 shortly thereafter I anticipate that the defense will
15 rest.

16 The government will then have the opportunity
17 for a rebuttal case, and following that we will take a
18 short recess.

19 Thereafter we move into the three final
20 stages of the case.

21 First you will hear summations. They will go
22 in this order: Mr. Schwartz will sum up, Mr. Platzman
23 will sum up, Mr. Schwartz will have an opportunity to
24 reply.

25 The summations will be followed by the second

1 gwjw 2

2 of the last three stages of the case, which is my charge
3 to you on the law.

4 Following my charge we come to the final
5 stage of the case, your deliberation on the facts, your
6 findings and your verdict.

7 We will begin now by resuming the cross
8 examination of Mr. Doulin.

9 You may proceed, Mr. Schwartz.

10 MR. SCHWARTZ: Thank you, your Honor.

11 W I L L I A M E . D O U L I N , resumed
12 the stand, having been previously sworn, testified
13 further as follows:

14 CONTINUED CROSS EXAMINATION

15 BY MR. SCHWARTZ:

16 Q Mr. Doulin, do you recall yesterday when
17 Mr. Fish testified?

18 A Mr. Who?

19 Q Fish.

20 A Yes, yes.

21 Q Do you recall he testified concerning someone
22 offering you 15 or \$30,000?

23 A He --

24 Q Do you recall that?

25 A Yes.

1 gwjw 3

Doulin - cross

2 Q Do you recall the incident he was referring
3 to?

4 A Yes.

5 Q Would you tell us what it was?

6 A I was in Hamilton Fish's campaign, in his
7 headquarters, when a Democratic candidate, one of his
8 workers, came to me, asked me if I would come over and
9 work for the candidate of the Democratic party, and
10 they would give me \$15,000 for my support.

11 I told him I wouldn't double-cross a
12 friend of mine for a million dollars, money meant
13 nothing to me, and I wouldn't do it.

14 Q In other words, they offered you money to
15 try and influence you to support another candidate?

16 A For my work.

17 Q For your work?

18 A Yes, working in Democratic headquarters.

19 Q To support another candidate?

20 A To support another candidate, yes.

21 Q Mr. Doulin, when you were on your vacations
22 in Florida, did you have access to a telephone at the
23 motel that you usually stayed at, Lodgest Motel?

24 A Yes, there's a telephone just outside of the
25 Lodgest kitchen.

1 gvjw 4

Doulin - cross

2 Q Could you receive calls there?

3 A If anyone called, the Lodgest would have to
4 send to the motel to get whoever the call was for, yes.

5 Q Did you from time to time while you were on
6 vacation telephone your family?

7 A Yes.

8 Q In Newburgh?

9 A Yes.

10 Q And stay in contact with them?

11 A Well, I used to call them quite often, yes.

12 Q Did they call you from time to time?

13 A No.

14 Q You made the calls to them?

15 A I made calls to them.

16 Q You told us yesterday, Mr. Doulin, that you
17 have one employee at the funeral home.

18 A Yes.

19 Q How long has he been your employee?

20 A Well, he was a lieutenant in the Fire Depart-
21 ment. He worked with me there. Then he worked extra with
22 me. Of course when he was working in the Fire Department
23 I couldn't get him. Then when he retired, about three
24 years ago he came to me as a steady employee.

25 Q Was he working part-time in 1971?

1 gwjw 5 Doulin - cross

2 A Yes.

3 Q Was anyone else working for you in 1971?

4 A Mr. Varland.

5 Q Was he working part-time or full-time?

6 A No, he was -- he's an undertaker. He's

7 what you call a tradesman. He comes in and does embombing
8 and helps if you need him for a funeral. He covered
9 for me when I was on vacation.

10 Q He covered you while you were on vacation?

11 A Yes.

12 Q If calls came into your funeral home, you were
13 not there, ... he took care of them?

14 A Yes, from the answering service.

15 Q While you were in Florida in 1971, Mr. Doulin,
16 did you on any occasion contact Abraham Weissman?

17 A No.

18 Q You never made any telephone call to him
19 during the month of March 1971?

20 A No, sir.

21 Q You are sure of that?

22 A Positive.

23 MR. SCHWARTZ: I have no further questions
24 your Honor.

25

PEDIRECT EXAMINATION

BY MR. PLATZMAN:

MR. PLATZMAN: Just one or two.

Q Mr. Doulin, with respect to this incident that Mr. Hamilton Fish testified to yesterday, at the time of the incident what were you doing in the headquarters of Hamilton Fish?

A I was sending out mail, working for him, taking him around to make speeches, take him to dinners.

Q You were part of the staff that he used for the election; is that right?

A I was vice-chairman of the Orange County Republican committee.

Q And you were working for the committee at the time to seek the re-election of Mr. Fish?

A Yes, non-paying job. I was working, yes.

Q Did you get any money for this?

A I volunteered my services.

Q Free?

A I don't get paid for being chairman, yes.

Q Who was this other fellow that went to the Democratic party? Do you remember what his name was?

A Bennett.

MR. SCHWARTZ: Objection.

What other fellow?

THE COURT: I am a little confused, too,
who went to the Democratic party.

Let's find out who Mr. Bennett was.

THE WITNESS: He was the opposition to Hamilton
Fish.

THE COURT: He was running for Congress?

THE WITNESS: Yes, Augustus Bennett.

THE COURT: It was one of his campaign
workers who wanted you to come over to the other side?

THE WITNESS: That's right.

Q Does this in politics happen, that people
change their jobs, work once for the Democrats, another
time for the Republicans?

A Well, I heard testimony here that some people
are Democrats one time and Republicans the next and so
forth, vice versa.

Q Do you remember the conversation that you had
with this man who asked you to work for the Democratic
party?

MR. SCHWARTZ: I object to that, your Honor.

THE COURT: Yes. The conversation I think
would be inappropriate.

MR. PLATZMAN: The door was opened up. He

1 gwjw 3 Doulin - redirect

2 asked about what took place. He asked partially about
3 the conversation.

4 THE COURT: All right.

5 I will allow it.

6 A It wasn't a man, it was a woman.

7 Q A woman, I'm sorry.

8 What conversation did you have?

9 A She asked me if I would come over and work
10 in the Democratic headquarters.

11 THE COURT: For Bennett?

12 THE WITNESS: For Bennett.

13 A She said, "If you come over, they are spending
14 a lot of money in this district, and I can get you \$15,000
15 if you will come over and work there."

16 I said, "No, I wouldn't double-cross a
17 friend for a million dollars," and I refused. That's
18 all.

19 Q I see.

20 A There was no bribe or anything, just wanted
21 me to go to work.

22 Q At the time you were being questioned when you
23 were before the grand jury, did you have that incident in
24 mind as something that was corrupt?

25 A No, absolutely not.

Q You testified I believe in response to Mr. Schwartz' question that you have some Cadillacs that you use in your business; is that right?

A Yes.

Q This is normal for an undertaker?

MR. SCHWARTZ: Objection, your Honor.

THE COURT: Sustained. I don't recall the testimony that way.

Q Mr. Doulin, what do you use those Cadillacs for?

MR. SCHWARTZ: Objection, your Honor.

THE COURT: Sustained.

Q How did you buy those, new or second-hand?

MR. SCHWARTZ: Objection, your Honor. I didn't go into any of this.

THE COURT: Yes. I am going to go back. I have the transcript right here. Maybe my recollection is poor.

Needless to say, as I have said before at this trial, the jury's recollection will govern. I think about all that we went into, that was gone into, is by Mr. Schwartz on page 1202. He asked what kind of car Mr. Doulin was using in 1971, and he said at line 10, "I think it would be a Cadillac."

1 gwjw 10

Doulin -- redirect

1235

2 Then there was some discussion about the
3 mileage one would get. I think that was the sum and
4 substance.

5 If you want to go into that Cadillac that he
6 was using and the mileage he got, I think that is proper
7 redirect. That seems to be about it.

8 MR. PLATZMAN: That's all I intend to do,
9 Judge.

10 Q Did you also use that Cadillac in your
11 business?

12 A Yes.

13 Q How did you buy it, new or second-hand?

14 A Second-hand.

15 MR. SCHWARTZ: Objection, your Honor.

16 THE COURT: All right. I will let it
17 stand.

18 Q One or two things that I forget to ask you on
19 direct examination, Mr. Doulin.

20 THE COURT: I hope they were asked on cross
21 because this is redirect.

22 MR. PLATZMAN: May I ask permission of the
23 Court on one issue in connection with these gasoline
24 slips?

25 Q Mr. Doulin, with respect to the gasoline

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gwjw 11 Doulin - redirect

1236

slips that I showed you yesterday, was every signature
on those slips your signature?

A Yes.

Q When you signed each one of those slips, were
you on weren't you in the place where the slip was issued?

A Yes.

Q Personally?

A Yes.

take

1 Q On March --

2 MR. PLATZMAN: I withdraw the question.

3 No other questions.

4 MR. SCHWARTZ: I have no further questions.

5 THE COURT: You may step down.

6 MR. PLATZMAN: I'm sorry. One additional thing.

7 THE COURT: Mr. Doulin, remain in your place.

8 Your attorney would like to ask something else.

9 Q You heard Monsignor Markowski yesterday mention
10 an incident when somebody offered you some money?

11 A Yes.

12 Q Do you recall that incident?

13 A I don't recall any incident unless it was about
14 money for a funeral.

15 Q Do you remember what he was referring to?

16 A No, I don't recall.

17 Q And at the time that you were before the grand
18 jury, was that incident before you and were you thinking
19 about that at all?

20 A No.

21 MR. PLATZMAN: No other questions.

22 MR. SCHWARTZ: No further questions.

23 THE COURT: You may now step down.

24 (Witness excused)
25

MR. PLATZMAN: Defendant rests.

THE COURT: Very well.

Does the Government wish to call any reply or rebuttal witnesses or present any rebuttal evidence?

MR. JOSSEN: The Government calls Frances G. DeFeo.

FRANCES G. DE FEO, called as a witness by the Government in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JOSSEN:

Q Mrs. DeFeo, I will ask you to keep your voice up so everyone in the courtroom can hear you.

How are you currently employed?

A In the district attorney's office in Goshen, New York.

Q Is that in Orange County?

A Yes, it is.

Q In what capacity are you employed?

A Legal stenographer.

Q I direct your attention to February 1971. - How were you employed at that time?

A As a secretary to Mr. Weissman.

Q What was Mr. Weissman's first name?

2 A Abraham.

3 Q Where was that office located?

4 A On North Street in Middletown.

5 Q Is that the same Abraham Weissman who subsequently
6 became the district attorney of Orange County?

7 A Yes, sir.

8 Q Would you tell us briefly what your duties for
9 Mr. Weissman were in February of 1971?

A General secretarial work.

11 Q Will you tell us briefly what that would include?

12 A Filing, shorthand, typing, payroll.

13 Q Mrs. DeFeo, I am placing before you what has
14 previously been marked as Government's Exhibit 38 for
15 identification.

16 Would you examine that document and tell us
17 whether you can identify it?

18 A Yes. It's a letter I typed in February of '71.

19 Q Please keep your voice up.

20 How can you identify it?

21 A Well, it's got my initials on it, it's our copy
22 paper and it's my stype with the capitals all the way
23 across on the first line and the signature down at the
24 bottom.

25 Q For whom did you type that letter?

2 A Mr. Weissman.

3 Q Would you tell us what the normal practice in
4 Mr. Weissman's office was in February 1971 after a letter
5 was typed?

6 A I would put it on his desk for signature. After
7 he signed them, he would bring them back, put them on
8 my desk to be mailed.

9 If there were any corrections on some letters,
10 I would have to redo them and take them back in the
11 office and then he would send them back.

12 Q Mrs. DeFeo, what was the normal practice in
13 February of 1971 with respect to the person who would
14 actually mail letters prepared in that office?

15 A I would mail all the letters. I shouldn't
16 say all the letters. I would take care of most of the
17 correspondence.

18 Once in awhile, if Mr. Weissman was going past
19 the post office, he would ask if the mail was ready and he
20 would take it and drop it off in the post office.

21 MR. JOSSEN: Your Honor, the Government offers
22 Exhibit 38 in evidence.

23 MR. PLATZMAN: No objection.

24 THE COURT: Received.

25 (Government's Exhibit No. 38 was received in

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DeFeo-direct/cross

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evidence.)

MR. JOSSEN: Your Honor, at this time I would like to read the letter to the jury.

THE COURT: You may do so.

(Mr. Jossen read Government's Exhibit No. 38 to the jury.)

MR. JOSSEN: Your Honor, I have no further questions of this witness.

MR. PLATZMAN: Just one very brief one.

CROSS-EXAMINATION

BY MR. PLATZMAN:

Q Mrs. DeFeo, how long had you been working for Mr. Weissman?

A In his private practice?

Q Yes.

A 23 years and 9 months.

Q And that included February-March of 1971?

A Up until December 31, 1971.

Q And then did you go to the district attorney's office?

A Yes.

Q That's when he moved over --

MR. PLATZMAN: I withdraw the question.

Q You testified a moment ago that normally you

recognized this letter because it's your style?

A Yes.

Q And that you typed it?

A Right.

Q Does it often happen that Mr. Weissman would dictate something and you would give it back to him and he wanted it corrected, and you would have to do it over again.

A Yes.

Q This is normal in a law office, isn't it?

MR. JOSSEN: Objection, your Honor.

THE COURT: What was the situation with Mr. Weissman relative to correspondence, as distinguished, for example, from pleadings and legal documents? Were there frequent retypings?

THE WITNESS: No.

Q Most of the time it was as he dictated it and you typed it?

A Yes.

Q But periodically with respect to any document in the office he would make corrections and you would have to retype?

A Well, corrections might have been a typographical error.

Q I don't mean only letters, but other pieces of paper, other agreements or pleadings or briefs or things of that sort. Would you occasionally have to retype?

MR. JOSSEN: Objection, your Honor.

MR. PLATZMAN: May we approach the bench?
I have a line of questioning.

THE COURT: I will certainly hear you.

(At the side bar)

MR. PLATZMAN: I have an offer of proof for this reason. One of my arguments is going to be that we can't split hairs how language looks sometimes when you are talking. Even a lawyer will sit and make corrections on other documents, and she was Weissman's secretary. I want to find out from her whether it isn't common a lawyer will dictate something, and he will have to correct it, and he will have to do it after it is written down.

THE COURT: You can certainly direct your attention to this document and I certainly would permit you to go into his practice with correspondence generally. But you know and I know that there is a vast difference between writing a social letter and drafting a complicated set of pleadings, a brief or a memorandum of law.

Therefore, I don't want you to mix apples and

1 oranges. Anything you want to do on correspondence,
2 and that would include legal as well as personal, I will
3 let you develop that, but I think that's a reasonable
4 latitude.
5

6 I think to mix in a complicated brief or
7 memorandum of law for corrections, it would only be
8 confusing.

9 MR. JOSSEN: The Government's position is what
10 Mr. Platzman is doing now would have been proper voir
11 dire, but it was not actually proper cross-examination.

12 THE COURT: I recognize that, but I am going to
13 permit it any way.

14 MR. PLATZMAN: I have no objection to the
15 document.

16 THE COURT: Within the limits I have indicated,
17 anything that relates to correspondence. I am going
18 over the Government's objection and saying, "Look, this is
19 cross-examination. I will permit you to do it," but
20 I think it would be unduly confusing if you got into his
21 practice relative to briefs and memos, because we are just
22 not in that subject area.

23 MR. PLATZMAN: All right.

24 (In open court)

25 Q In addition to the occasions when there might

1 have been a typographical error, were there also instances
2 when you returned a letter, correspondence, to Mr.
3 Weissman and Mr. Weissman thought the meaning wasn't the
4 way he wanted it, and he would redictate it and do
5 another letter?
6

7 A No, sir.

8 MR. PLATZMAN: No other questions.

9 MR. JOSSEN: No further questions.

10 THE COURT: Thank you very much.

11 (Witness excused)

12 MR. JOSSEN: May we approach the side bar again,
13 your Honor?

14 THE COURT: Yes.

15 (At the side bar)

16 MR. JOSSEN: Your Honor, at this time the
17 Government on its rebuttal case renews its offer of
18 Government's Exhibit 26 for identification, the sworn grand
19 jury testimony of Abraham J. Weissman, the portions of which
20 the Government would intend to read into evidence I reviewed
21 with your Honor yesterday. The Government submits that
22 in view of the fact the defendant has now taken the stand
23 and has testified and denied any phone calls or any contacts
24 whatsoever with Mr. Weissman during the period of time
25 that is involved in this case, that the door has been opened

1 and that it is absolutely unjust and unfair to prevent
2 the Government from introducing the sworn testimony of
3 Mr. Weissman which is rebuttal to the defendant's testimony,
4 and that to preclude the Government from using this would
5 certainly be a miscarriage of justice in this case.
6

7 MR. PLATZMAN: The defendant submits there has
8 been no change in the situation. What counsel is saying
9 would be true of any document then, because every trial
10 would be bound to have something -- there would be a
11 difference of opinion between what appears in the statement
12 which is not otherwise admissible and what appears as
13 testimony on the trial.

14 We submit that it is still violative. We have
15 no opportunity of cross-examining him. We have no
16 opportunity of determining the correctness and the accuracy.
17 That is the whole purpose of the rule. It is to be able
18 to challenge the accuracy, obviously, of the so-called
19 confessions, that they are contradictory. Otherwise
20 the question wouldn't come up in any of the cases.

21 If it was proper to exclude it before, it is
22 even more so proper now.

23 MR. JOSSEN: Might I state one further point,
24 your Honor? As we indicated yesterday when we argued on
25 this question, we pointed out that neither side should be

prejudiced by the unfortunate death of Mr. Weissman.

I indicated that even if the sworn testimony of Mr. Weissman came in, the Government would still be prejudiced as contrasted with the opportunity to have him here as a witness and to testify.

Now we are placed in a further aggravated situation where the defendant has gotten on the stand and sworn before the jury that at no time during the critical period of time here did he have any contact, any conversation with Mr. Weissman, and the Government is precluded from even putting in the evidence that we have which impeaches that testimony, which the jury can weigh and consider. We submit it is grossly unfair to exclude it.

THE COURT: I have considered this matter over a period of several days, first in connection with my initial ruling and, frankly, overnight on the supposition that the Government would likely seek to introduce the transcript at this time.

I suggest that what you are really saying is that this has become even more crucial to the Government than it was before, and I can appreciate the argument which you make. At the same time, the very fact that it has become more crucial leads me to conclude that I must of necessity deny your application.

2 I understand the rationale of your argument,
3 but I cannot get away from the fact that on crucial
4 evidence the defendant will not have the right to cross-
5 examine and the jury will not have the benefit of
6 evaluating the witness live.

7 Accordingly, the Government's application to offer
8 the grand jury testimony of Mr. Weissman is denied.

9 MR. JOSSEN: Thank you.

10 THE COURT: Off the record.

11 (Discussion off the record)

12 (Continued on next page)

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2 (In open court)

3 MR. SCHWARTZ: Your Honor, at this time the
4 government rests?

5 THE COURT: Is there any surrebutal?

6 MR. PLATZMAN: Yes, your Honor, just a few
7 minutes.

8 THE COURT: You want Mr. Doulin?

9 MR. PLATZMAN: Yes, Mr. Doulin.

10 THE COURT: Mr. Doulin, you are recalled to
11 the stand as a witness in surrebuttal.

12 W I L L I A M D O U L I N, the defendant,
13 called in surrebuttal, having been previously
14 sworn, testified further as follows:

15 THE COURT: Mr. Doulin, you were sworn
16 yesterday when you first took the stand. You will be
17 continuing your testimony on surrebuttal under the same
18 oath.

19 Do you understand that?

20 THE WITNESS: Yes, sir.

21 DIRECT EXAMINATION

22 BY MR. PLATZMAN:

23 Q Mr. Doulin, just one or two very brief
24 questions about this letter.

25 Did you search your records to find out

1 gwjw ? Doulin - direct

2 whether you had the original?

3 A I called las tnight and asked Mr. Tracy --

4 MR. SCHWARTZ: Objection, your Honor.

5 THE COURT: I made a request of him to do
6 certain things.

7 In any event, did you cause your records to
8 be searched?

9 THE WITNESS: Yes.

10 Q Did he find the letter, whoever did the
11 searching?

12 A Nothing.

13 MR. SCHWARTZ: Objection, your Honor.

14 THE COURT: All right.

15 In any event, you do not have the letter here?

16 THE WITNESS: No.

17 THE COURT: Have you seen the letter in the
18 last few days?

19 THE WITNESS: No.

20 Q Mr. Doulin, do you deny receiving that letter?

21 A I don't recall receiving one. I think -- maybe

22 MR. SCHWARTZ: Objection, your Honor, as to
23 what he thinks.

24 THE COURT: Yes. "I don't recall receiving
25 one."

1 gwjw 3

Doulin - direct

2 Q You might have received it?

3 MR. SCHWARTZ: Objection. He is asking him
4 to guess.5 MR. PLATZMAN: I'm supporting counsel's
6 position --7 THE COURT: Please. Each of you has his own
8 argument. I do not want it now before the jury.9 Let's ask another question on this line.
10 I will permit you to go further if you wish.

11 Q How many letters do you get a year?

12 A Oh, I would say maybe 2,000.

13 Q You can't recall specifically this letter;
14 is that right?

15 A I don't recall it.

16 Q Is it possible that you did get it?

17 THE COURT: Sustained.

18 Q Does this refresh your recollection as to
19 whether or not Mr. Weissman was running for district
20 attorney at the time?21 A Mr. Weissman was not a candidate at the time.
22 I testified --23 MR. SCHWARTZ: Objection, your Honor, to
24 what he testified to.

25 THE COURT: Yes. "Mr. Weissman was not a

1 gwjw 4 Doulin - direct

2 candidate at the time" is responsive to the question.

3 Q Does this refresh your recollection at all as
4 to whether or not he wanted to be a candidate?

5 A He never had his name presented to the
6 executive committee --

7 MR. SCHWARTZ: Objection, your Honor, not
8 responsive.

9 THE COURT: Sustained, not responsive.

10 Mr. Reporter, would you read back Mr. Platzman's
11 question.

12 (Question read)

13 A No.

14 Q What is your recollection as to who the
15 candidates were at that time?

16 A I testified Mr. Cohen. In fact, he was the
17 only one. I explained politics --

18 MR. SCHWARTZ: Objection, your Honor.

19 THE COURT: Yes, Mr. Cohen was the only one.

20 THE WITNESS: The only candidate that went
21 before the committee.

22 Q That was the final submission to the committee,
23 only one name; is that right?

24 A That's right.

25 MR. PLATZMAN: No other questions.

1 gwjw 5

Doulin

2 MR. SCHWARTZ: I have no further questions,
3 your Honor.

4 THE COURT: You may step down, sir.

5 (Witness excused)

6 MR. PLATZMAN: Defendant rests.

7 THE COURT: Is there any further surrebuttal?

8 MR. PLATZMAN: No, your Honor.

9 THE COURT: Does the government rest on its
10 entire case?

11 MR. SCHWARTZ: Yes, your Honor, the govern-
12 ment rests.

13 THE COURT: Does the defense rest on its
14 entire case?

15 MR. PLATZMAN: Yes, your Honor.

16 THE COURT: Very well. We will take
17 motions.

18 I think you probably also want a few moments
19 to organize your papers for your summations; am I correct?

20 MR. PLATZMAN: Yes, your Honor.

21 MR. SCHWARTZ: That's correct, your Honor.

22 THE COURT: We will take a ten minute
23 recess, ladies and gentlemen. That will permit me to
24 take up a legal matter and then we will begin with the
25 summations.

Remember the order: Mr. Schwartz will go first, then Mr. Platzman and Mr. Schwartz to have a rebuttal.

I estimate that the summations should take in the neighborhood of two hours in total. They may run a little shorter, they may not.

Depending on when the summations finish will depend on whether I charge you and then send you to lunch to deliberate after lunch or I send you to lunch and have you come back to hear my charge. The timing will just depend on where we are in the lunch hour.

The jury is excused for a ten minute recess.

Please do not discuss the case among yourselves and keep an open mind on all facets of the case until the case has been concluded and given to you following my charge.

(Jury absent)

THE COURT: I will hear any defense motions which you wish to make at this time, Mr. Platzman.

MR. PLATZMAN: Your Honor, I won't extend those motions.

They are merely renewals of the motions made at the end of the government's case, and the defendant urges at the end of the defendant's case those motions

1 gwjw 7

2 are renewed with respect to a request for a dismissal of
3 the entire indictment as well as a dismissal of the
4 individual counts for all the reasons that were previously
5 argued.

6 THE COURT: The government's position I
7 would suggest is the same as previously indicated; is
8 that right?

9 MR. JOSSEN: That's correct, your Honor.

10 THE COURT: Decision reserved.

11 (Recess)

12 (In open court - jury present)

13 THE COURT: Ladies and gentlemen, we will
14 now hear the summations or closing arguments of counsel.

15 We will first hear from Mr. Schwartz, who
16 will sum up on behalf of the government.

17 Mr. Schwartz.

18 MR. SCHWARTZ: Thank you, your Honor.

19 May it please the Court, Mr. Platzman, ladies
20 and gentlemen of the jury:

21 When this case began you were told it was an
22 important case, and I submit to you that you have seen
23 it is an important case because it goes to the heart of
24 our system of justice, to the oath that witnesses take
25 when they come into court or appear before a grand jury.

1 gwjw 8

2 Without that oath and respect for that oath, our system
3 cannot function.

4 Beyond that this case is even more serious
5 with respect to the oath because here the oath was violated
6 to cover up the fixing of a criminal case in state court.

7 For both those reasons the oath and the
8 fact that there was a tampering in a criminal case, this
9 case is a very important one.

10 I want to emphasize that it is important
11 whether or not there was any money that passed hands in
12 the case. The payoff is not the significant point.

13 The point is that a man was successful in
14 tampering with the state prosecution. He was successful
15 in obtaining a sentence of probation for Richard Monell.
16 Mr. Doulin accomplished that. Whether or not he received
17 any money is really of no consequence.

1 GWmch

2 Of course, the Government contends, and you have
3 seen the proof, the Government submits he did receive
4 money for it, but that is only an additional fact.
5 The most important thing is that he successfully tampered
6 with that state case.

7 Let's begin, if I may, with first a look at the
8 two sentences in Richard Monell's case and that sets
9 the background, I submit to you, for the rest of the case.

10 Richard Monell pleaded guilty to attempted
11 assault in the second degree. He appears in court on
12 March 5, 1971. The district attorney is there, the
13 defense attorney is there, Judge Isseks is there.

14 Richard Monell had been interviewed by the
15 probation department. That department had made only one
16 recommendation to the Court, that is, Monell should be
17 incarcerated, he should be sent to jail. A presentence
18 report is submitted to the judge which describes Richard
19 Monell as a psychopath, as a man who cannot confirm his
20 conduct to that of Society.

21 The district attorney's office appears and is
22 asked whether there is any recommendation with respect to
23 Monell, and there is none because the district attorney's
24 office never made any commitment to make any recommendation
25 on the Monell case. There was a recommendation of the

probation office and that was all.

Judge Isseks hears the impassioned plea of Mr. Monell's defense attorney, considers it and decides that Monell must go to jail, and he sentences him to a term not to exceed 2-1/2 years, and, as you have heard, that sentence carries a minimum period of incarceration.

The judge describes the crime and says Monell is lucky he is not before him for murder, and then sends him to jail to serve his sentence.

Well, Richard Monell sits in jail about three weeks and then, all of a sudden, on March 26th a different assistant district attorney appears in court. There has been no change in Richard Monell, there has been no change in the recommendation made by the district attorney's office as far as the file reflects, nothing in the district attorney's file to prove or substantiate that anyone contacted that office, nothing in the probation office file to indicate that anyone contacted the probation office, nothing as far as the judge to indicate that anyone contacted the authorities in connection with Mr. Monell's case.

But what happens? Mr. Weissman stands up and he tells the Court that responsible citizens have contacted the district attorney's office. He doesn't identify them.

2 Responsible citizens have contacted the district attorney's
3 office and now the district attorney's office thinks that
4 this psychopath should be freed, he should not go to jail.

5 The judge remarks how surprised he is that this
6 is what has happened, but he decides, based upon what
7 Mr. Weissman had to say, that he will take a chance, and
8 he does release Richard Monell. He sentences him to five
9 years' probation.

10 That is the background to this case. That is
11 the factual setting for all the evidence that you have
12 heard, that sentence to 2-1/2 years in jail and three
13 weeks later he walks out with probation.

14 You have had a unique opportunity during the
15 course of this trial -- it hasn't been a long trial, but
16 you have had a unique opportunity to see in part the
17 functioning of a district attorney's office, in part
18 the functioning of a probation office, and in part some of
19 the politics in Orange County.

20 Unfortunately, you have also had an opportunity
21 to see a vulnerable side of the criminal justice system,
22 the individuals who can be influenced, and, in this
23 case, Mr. Weissman, who was influenced by Mr. Doulin.

24 Now, I indicate, and I can only indicate, some
25 of the things that Mr. Platzman may say to you when he sums

2 up. From listening to Mr. Doulin's direct testimony,
3 I assume that part of his summation will concern itself
4 with credit cards and the dates on the credit cards and
5 gas purchases. I submit to you, ladies and gentlemen,
6 that really is focusing your attention away from the real
7 issue in this case. Mr. Doulin did not have to be in
8 Newburgh to accomplish what he accomplished in this case.
9 The point is he was able to contact Abraham Weissman,
10 he was able to make the necessary contact after Mrs. Grant
11 called his family and made all the other calls, and he
12 was able to accomplish what he had promised Mrs. Grant
13 he would accomplish.

14 He could have been buying gas all up and down
15 the East Coast; it didn't matter, as long as he reached
16 Abraham Weissman. That's what happened here. The fact
17 that he was on the road in early April is of no consequence.
18 It only means that the payoff was on a different date from
19 the recollection of Flo Hall, and there is nothing to
20 that. In fact, I submit to you it makes Flo Hall's
21 testimony even more believable, because she is giving you
22 her best recollection. She hasn't tried to conform her
23 testimony to any other documents or any other information
24 that may be available. She has given you her best
25 recollection as to conversations and as to events, and if

2 you think about it, when it comes to a payoff, the thing
3 that will stick in someone's mind is not the date that
4 it occurred, but the circumstances where she went and who
5 it was delivered to.

6 Now, I'll later on refer to perhaps some other
7 arguments you may hear from Mr. Platzman, but let me
8 continue going into the facts as they were presented to you
9 and start with the 1970 period when Richard Monell
10 had entered his not guilty plea to the indictment, the
11 assault indictment.

12 In 1970, sometime in December, Richard Monell had
13 a conversation with his grandmother, and his grandmother
14 told him very simply that if he pleaded guilty to attempted
15 assault second, which was going to be or had been offered
16 to him, he could be sure that he wouldn't go to jail. In
17 fact, she told him the precise sentence he would get, five
18 years' probation.

19 Well, I assume Richard Monell, seeing a good
20 thing and knowing that he was going to stay out of jail
21 even though he committed a violent crime, jumped at the
22 opportunity when his grandmother told him that he was going
23 to go free and get a sentence of probation. And so, in
24 mid-December he pleaded guilty to attempted assault second.

25 Now, what happened before he pleaded? He had

1 a conference with his lawyer, Mr. Shapiro, and Mr. Shapiro
2 remembers Richard Monell's reaction and discussion during
3 that conference. Mr. Shapiro was telling Richard Monell
4 the number of years, possible years, he might face if he
5 pleaded guilty even to attempted assault second. And
6 what was Monell's reaction? What was Richard Monell's
7 reaction? "Don't worry. I know what I'm doing. Every-
8 thing will be all right."

9
10 And he was right. Everything worked out just
11 the way his grandmother told him it would work out,
12 five years' probation.

13 Well, while these same events were going on,
14 Richard Monell was also having trouble in family court,
15 and I pick that point up here because I think the chron-
16 ology is important. At the same time that he was changing
17 his plea from not guilty to guilty in his assault case,
18 he was also jailed for failure to pay support in family
19 court. And what happens with his family court case?
20 I think this establishes a pattern which was proved later
21 in the assault case.

22 In the family court case he is sentenced to a
23 jail term of six months. Mrs. Grant says that she wants
24 Richard home by Christmas and she is going to talk to her
25 friend. That's what she tells Flo Hall.

And, sure enough, Mrs. Grant is successful in getting Richard Monell out of jail that same December on a six-month sentence. Monell recalls he served approximately two weeks, maybe even less. And who does Mrs. Grant have to thank for that? Her friend, Bill, Mr. Doulin, who successfully got Richard Monell out of the family court jail.

Another instance where he helped Richard Monell and continued to help Richard Monell.

As part of that, and I think you should recall the testimony of Flo Hall on this, Flo Hall met Mr. Doulin while Richard Monell was in family court. That was outside the courtyard after Flo Hall had visited Richard Monell in jail. And what do you think Mrs. Grant and Mr. Doulin were talking about that prompted Mr. Doulin to say to Flo Hall, "This is the girl friend of a bad boy."

They were obviously talking about Richard Monell and what, if anything, could be done for Richard Monell, or what was already in progress to help Richard Monell get out of the family court jail. And, as I say, he was successful. Richard Monell served about two weeks of a six-month sentence.

MR. PLATZMAN: If your Honor please, I hate to interrupt counsel. I don't believe there is any testimony

2 that Mrs. Grant and Mr. Doulin were discussing Richard
3 Monell.

4 THE COURT: It would seem that counsel is entitled
5 to have the jury draw inferences, counsel. I remember
6 the testimony, as I am sure you do, "Oh, you are the girl
7 friend of the bad boy," or something like that.

8 Now, it is the jury's recollection of the
9 facts, of course, which in the final analysis governs.

10 Ladiss and gentlemen, you will have presented
11 to you both direct and circumstantial evidence, and it
12 will be argued that you will be entitled to draw certain
13 inferences from the evidence. I believe that is what counsel
14 is doing at the moment.

15 However, I would suggest that it is your recol-
16 lection of the facts which governs, and it is for you
17 to draw whatever inferences you believe reasonable.

18 MR. SCHWARTZ: Yes. I think I should say I
19 am not telling you what the record is in this case.
20 You heard it along with me and what you remember is, of
21 course, controlling. I am telling you what I believe the
22 record supports as to what really happened to enable
23 Richard Monell to get his sentence of probation.

24 Now, after Richard Monell is released from
25 family court, and that's in December 1970, he is awaiting

1 sentencing on the assault case. That sentencing is
2 scheduled for March 1971, and prior to that sentencing
3 Flo Hall has a number of conversations with Mrs. Grant
4 and in at least one of them Mrs. Grant tells Flo Hall that
5 Richard is going to get five years' probation, he is not
6 going to jail on the assault case. This is about the
7 sentencing. And you will recall what Flo Hall's reaction
8 to that was. She told Mrs. Grant Richard belonged in jail.
9

10 Maybe that sounded a little strange at the time,
11 but I think we all heard it later when Richard Monell
12 was questioned. He said there were plenty of times when
13 Flo Hall said he belonged in jail, and I submit to you that
14 was one of the times when Mrs. Grant told Flo Hall that
15 he was going to again get away with something, he was not
16 going to go to jail on this serious shooting.

17 Now comes the sentencing on March 5th and there
18 are three people basically who are involved at the
19 sentencing, and Flo Hall testified concerning it. Richard
20 Monell goes into court expecting to be walking out that
21 very same day. Flo Hall is there sitting in the
22 spectators section and, of course, his lawyer is there
23 with him, Norman Shapiro.

24 To Richard Monell's surprise the judge sentences
25 him to jail and Richard's reaction is to turn around and

2 say, "Something is wrong."

3 Flo Hall remembers the first thing she had to do
4 was call the grandmother to find out what was going on.
5 Richard gets taken to jail and Flo Hall does what she
6 is supposed to do: She contacts Mrs. Grant and tries to
7 find out what happened, what went wrong. Mrs. Grant, of
8 course, doesn't have an answer then, because apparently
9 she had been expecting a sentence of probation and she
10 doesn't know why Richard Monell went to jail.

11 She says, "Tell Richard to sit tight, to take
12 it easy. I will contact Mr. Doulin and find out what
13 happened, find out what went wrong."

14 And Flo Hall sends those messages to Richard
15 Monell. She visits him -- and you saw the exhibits,
16 the record of the visits Flo Hall made on the various
17 days to the jail. This is Government's Exhibit 13.

18 When Flo Hall visited Richard and kept giving him
19 the messages that she got from Mrs. Grant, "We can't
20 locate Mr. Doulin. He is on vacation. We are making
21 telephone calls. We are leaving messages. Sit tight."

22 You heard Richard Monell describe his situation.
23 He had no choice. He just sat there and waited to find
24 out what was going to happen. This is all during the period
25 after the first sentencing.

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2 But apparently Mrs. Grant panicked to some extent,
3 because she starts making phone calls all over the place,
4 and you heard Mr. Ingrassia testify that he received a
5 telephone call from someone who I submit to you is obviously
6 Mrs. Grant, and he seems to recall it was the grandmother
7 of Richard Monell.

8 (Continued on next page)

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2 Mr. Ingrassia gets this irate abusive phone
3 call from Mrs. Grant. "What's going on? Why did Richard
4 go to jail?"

5 And he pretty much cuts her off and cuts the
6 conversation short and hangs up.

7 Then Mr. Cohen gets a telephone call. Mrs.
8 Grant takes the same tact with him. "What went wrong?"

9 You heard Mr. Cohen testify what he said to
10 Mrs. Grant.

11 He said, "We didn't make you any promises,
12 no promises were made to you."

13 Obviously what Mrs. Grant was saying to him
14 was, "I had a promise, I had a promise Richard Monel
15 wasn't going to go to jail. What is he doing sitting
16 in the Goshen jail in Orange County jail?" And Cohen
17 just hung up, no promises.

18 Mrs. Grant isn't satisfied. She makes another
19 call. That's the call to Norman Shapiro.

20 In that call she says even more. She says to
21 Shapiro, "What happened?"

22 She assumes that Shapiro is in on it because
23 she says, "That sentence was bought and paid for."

24 And he says, "What are you talking about?"

25 And she says, "You know, the undertaker. He's

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2 in Florida. That sentence was bought and paid for."

3 Can there be any doubt in your mind that that
4 conversation took place and that Mrs. Grant didn't say
5 that to Norman Shapiro?

6 You saw this note. Regardless of the language
7 that was used in the note, Government's Exhibit 2-F,
8 the meaning is very clear, and I submit that it shows to
9 you that this note made on March 5, 1971, the very day
10 of that jail sentence, shows that Norman Shapiro testified
11 accurately as to the conversation he had with Mrs. Grant.

12 She called and complained -- not to use the
13 language of the note -- she called to complain that her
14 political connections had not come through, the undertaker
15 was in Florida and the sentence that was bought and paid
16 for, what happened to it, how did Richard end up in jail?

17 Well, the messages continue. Flo Hall keeps
18 telling Richard Money, "Sit down, Doulin is away."

19 Finally Mr. Doulin makes contact with someone
20 in the district attorney's office and a resentencing is
21 scheduled.

22 Who appears for the resentencing? Who appears?

23 This time it is Abraham Weissman. Abraham
24 Weissman comes into court and, as I said to you before,
25 for no reason that can be ascertained from any of the

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2 records in t's case or any of the testimony, all of a
3 sudden changes the position of the district attorney's
4 office and tells the Court that Richard Monell, that this
5 man who you have seen testify here, has been rehabilitated
6 and should be set free, and that he should be his own
7 judge and jury, I think was the language, and that he
8 should be permitted to serve out his sentence as a
9 probation sentence.

10 What does the sentence turn out to be, five
11 year probation sentence, just as Mrs. Grant predicted.

12 Now, how is it that Abraham Weissman came to
13 be the one who was influenced and could be influenced in
14 this case?

15 I submit to you you heard that from at least
16 two different sources.

17 Mr. Cohen told you about Mr. Weissman and a little
18 bit about Mr. Weissman's interests.

19 You recall Mr. Cohen testified that after Mr.
20 Cohen was elected he had a conversation with Mr. Weissman.
21 Mr. Weissman wanted to leave the office.

22 In substance -- I'm not going to try and quote
23 the exact words from the transcript, but the substance
24 of the conversation was, Mr. Cohen told Mr. Weissman,
25 look, I know that you want to leave the office. Please

1 stay. You will become the chief assistant district
2 attorney. I'm not going to stay very long. You become
3 a district attorney and I know you want to be a judge.
4

5 And that was unfortunately, I submit, Mr.
6 Weissman's weak point. He wanted to be a judge and he
7 needed the support and influence of William Doulin if he
8 wanted to be successful in Orange County. That's what
9 made him vulnerable. That's what made him go into court
10 and change this recommendation of jail or changed to a
11 recommendation of probation. That's what happened in
12 this case. That's who Mr. Doulin was able to reach.

13 He was able to reach Mr. Weissman and accomplish
14 this sentence of probation.

15 I submit to you, ladies and gentlemen, if
16 you look at the last exhibit that was received, Govern-
17 ment's Exhibit 38, which was read to you by Mr. Jossen,
18 it is clear from this that Mr. Doulin knew Mr. Weissman's
19 aspirations and that Mr. Weissman certainly from the
20 testimony you have heard in this case must have under-
21 stood that Mr. Doulin's support was very, very important.

22 In fact, I think Mr. Doulin testified on his
23 own direct testimony that the usual way for somebody
24 who wants to seek a county-wide position, the usual way
25 for him to start his campaign for that position is to

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2 contact the county chairman.

3 So Mr. Doulin had a great deal of influence,
4 could have a great deal of influence over Mr. Weissman's
5 future and what Mr. Weissman hoped to obtain.

6 As I said, unfortunately that's what caused
7 him, I submit, to change, to cause the judge to change the
8 sentence in Richard Monell's case.

9 Now, what other witnesses have you heard?

10 In fact, I should say briefly, ladies and
11 gentlemen, that because the government called a witness,
12 and I'll be very specific -- because the government
13 called Mrs. Grant as a witness, it by no means means
14 that the government wants you to believe Mrs. Grant.
15 In fact, just the opposite, I submit to you, is true
16 here.

17 One perhaps could be charitable and say Mrs.
18 Grant is old and forgot what happened. But you don't
19 forget a payoff. You don't forget fixing your grandson's
20 case.

21 You saw Mrs. Grant. I don't have to describe
22 her demeanor. I would like to say some words about her
23 testimony.

24 I submit to you that she was alert, she under-
25 stood exactly what she was doing and she had a loyalty

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2 which went beyond the oath that she took before you. Her
3 loyalty was to her old friend, William Doulin. It is
4 that loyalty that caused her to come into this courtroom
5 and tell a story to you that makes absolutely no sense
6 and is contradicted all over the record. Just to
7 point out a few of the things that Mrs. Grant said to
8 you.

9 At the beginning of her testimony she talked
10 about the \$1480 and said, "I'll tell you where every penny
11 went." Then when I asked her where every penny went, she
12 couldn't tell us. She said, "I'll have to check with
13 my husband."

14 Later on, near the end of her testimony, she
15 gave us a reason, and I'll get to that reason.

16 She told us at points she had a bad memory.
17 She remembered buying a tractor in 1969 for -- I don't
18 remember this, but she did, I think -- \$1800 for the
19 tractor and \$200 for parts and she remembered the name of
20 the company, Haviland Company I think it was for the
21 tractor.

22 She said on the stand that she kept cash
23 around the home, but then when she was confronted with
24 her grand jury testimony in which she had said the
25 opposite, she then said she didn't remember.

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We asked, "What did you say when Flo Hall told you that Richard had been sentenced to two and a half years in jail?"

She said she didn't say anything, not a word, not a word about her grandson being sentenced in jail.

Does that make any sense to you?

I asked her if she was surprised when Richard received the jail sentence?

I submit the kind of answer she gave was very interesting. She didn't answer whether or not she was surprised. She started talking about money. She started to tell us about some money that she had paid, when all she had been asked is whether she was surprised at the sentence. I think that tells you what was really in Mrs. Grant's mind, what she was trying to cover up.

Then she denied she had ever told agents that had interviewed her that she obtained the probation sentence by talking to a friend, a close friend of the governor's, and then you heard the testimony from one of the agents who interviewed her, where Mrs. Grant told them that she had obtained the probation sentence, and I think she mentioned \$1500 to them through a close friend of the governor. That she was trying to hide from

you.

She told you that she frequently went to Mr. Doulin to ask him for favors. She could only remember two, possibly three. She often went to Mr. Doulin for favors. She told you she never ever went to Mr. Doulin for a favor for Richard Monell.

I submit Richard Monell must have been one of the biggest problems Mrs. Grant ever faced. Yes, she never went to him to ask for a favor for Richard Monell. Other things, yes, not Richard Monell. When you add to that that John Monell testified -- he testified Mrs. Grant was always going to Mr. Doulin to ask for favors for Richard Monell.

Then we asked her about the money. She finally near the end came up with an explanation for the \$1480. She said it went to John Monell to help purchase some property or a house that became an antique shop.

Well, we asked, "Why did you take \$1480 in cash out of the bank?"

No answer to that.

"Did John Monell have a bank account in the same bank you had your bank account?"

"Yes."

"Why didn't you transfer the money from your

account to John Monell's account if the reason you were taking the money out was so John Monell could get the money?"

No answer to that.

It makes no sense why they drew out \$1480 in cash unless they were going to give it to Mr. Doulin, and that's the reason that they did draw it out.

I submit to you, ladies and gentlemen, you look at Mrs. Grant's testimony and it cannot be believed. She came in here to tell you a story, to protect her old friend. That's the only motive that she had. She was tired of protecting Richard Monell. She had done enough for him. It was time to be sure that nothing happened to her close friend, William Doulin, a friend of forty, fifty years. That's the only reason that she would have to be untruthful here from this witness stand. There is absolutely no other motivation she could have except to protect Mr. Doulin, no other reason to not tell us the truth about where that money went or about conversations with Mr. Doulin.

The same is true of John Monell John Monell smiled sometimes from the witness stand, and when he did smile it was only when he was looking at Mr. Doulin or saying something complementary about Mr. Doulin. Otherwise,

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2 he had a very straight face I think you will recall, and
3 I submit to you he also was here to try and help Mr.
4 Doulin.

5 He said that it was not unusual, and I'm not
6 quoting, I'm giving you substance -- it was not unusual
7 for Mrs. Grant to go to Mr. Doulin whenever she had
8 problems with Richard Monell and they were always having
9 problems with Richard Monell.

10 Of course, in the grand jury Mr. Doulin
11 denies -- from the stand he denied he ever had any
12 discussions with Mrs. Grant about Richard Monell. I
13 submit to you that that just doesn't make any sense.
14 It is impossible that that is the truth.

15 Would John Monell come in here and make that
16 up? He was trying to stay as close to the truth as he
17 could.

18 You recall when he was asked what other
19 conversations were there about Richard Monell's criminal
20 case, then his response was, "I don't want to know, I
21 didn't listen, Mrs. Grant did the talking, I didn't really
22 listen, we didn't have conversations, she would just
23 speak."

24 I submit he wanted to give you a little bit
25 to look credible, and what he did was tell you some truth

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2 and that truth shows you that Mrs. Grant hasn't been
3 telling you the truth and Mr. Doulin hasn't been telling
4 you the truth.

5 Then he gives some explanation for what happened
6 to the money, the \$1480.

7 Again I submit to you, ladies and gentlemen,
8 it makes no sense. One time he says that he keeps money
9 at home. He said that under oath here. In the grand
10 jury he said under oath he didn't keep cash at home. He
11 said he needed to purchase some property. The property
12 wasn't purchased until July. The money was drawn out
13 in March.

14 These stories do not make sense. And there
15 is only one reason that they would be motivated not to
16 tell you the truth, and that is because they want to
17 protect an old dear friend who did something for them,
18 helped with Richard Monell's case.

19 Now they are going to try and do something
20 for him, help him with his case.

21 Of course you have heard other witnesses in
22 this case, Flo Hall and Richard Monell, who I have
23 mentioned so many times. They don't deny to you that
24 they were involved in the scheme to fix Richard's case.
25 I guess the language you might hear sometimes is they were

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2 accomplices or co-conspirators, whatever it was. They
3 were part of this scheme. They were up there and they
4 admitted it to you. They didn't try and hide it from
5 you. They told you what their roles were. They have no
6 motives to make up a story about this.

7 Mr. Platzman questioned Richard Monell to
8 ask him what kind of a deal he got or what advantages he
9 got from the government on his probation violation case
10 which we have heard is still pending.

11 Well, you heard what happened to Richard
12 Monell. He came up from the Virgin Islands, turned him-
13 self in and spent thirty-five days in jail waiting for
14 a judge. That is some deal that he got. He finally spent
15 some time in jail on the probation case.

16 He has no motive to make up this story. He
17 has no motive to hurt his family, to tell you that his
18 grandmother was involved in this. He has no motive what-
19 soever to lie and nobody is giving him anything. You
20 heard that from the witness stand from him.

21 What about Flo Hall? Does Flo Hall have any
22 reason for testifying to anything but the truth?

23 What reason, what logical reason is there that
24 she would not be telling you the truth? She is married
25 now. She saw Richard Monell when he came back from the

1 Virgin Islands because he came by to her place of business
2 twice. She hasno motive to lie to you. She is here to
3 tell you the truth and to tell you exactly what happened.
4 That's what I submit to you.
5

6 There is absolutely nothing, no reason that
7 she wouldn't be willing to tell you the truth. She
8 admitted from the stand she tried to protect Richard
9 Monell when he was arrested in the state case or when he
10 gave himself up on the state case. She was frank with
11 you. She told you he told me to tell a story, and I
12 told the story, he didn't do it. She said she changed
13 the story. She said she testified he didn't shoot the
14 man, he hit her. She wasn't hiding anything from you.
15 I submit to you that she was telling you the truth here
16 today and throughout the trial when you heard her.

17 Then we come to the period after the sentencing,
18 after the second sentencing, when Richard Monell now has
19 his five year probation sentence.

20 What happens?

21 Well, something very interesting. Mr. Doulin
22 meets Mr. Shapiro at the courthouse or in the courthouse
23 complex in Goshen.

24 What does Mr. Doulin say to Mr. Shapiro?

25 Here I submit the exact words are very important.

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2 The way the conversation started as Mr. Shapiro recalls
3 it.

4 Mr. Doulin says that "he" -- Mr. Doulin --
5 "didn't know what I" -- Mr. Shapiro -- "might have heard
6 about the Monell case."

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2 Now, why would the conversation start with a
3 line like that? "I don't know what you have heard about
4 the case. All I did was put in a good word for the
5 grandson of a dear old friend."

6 The reason he said that is because he knew that
7 Mrs. Grant had called up Mr. Shapiro and had said too
8 much to Mr. Shapiro. She had said the undertaker, she had
9 said "bought and paid for," she had said he was in
10 Florida, she said, "You know what I'm talking about," and
11 Mr. Doulin had to be on the defensive. He had to mend
12 the fences. He had to see Mr. Shapiro and make sure it
13 didn't go any further. He had to say, "Look, I don't
14 know what you have heard."

15 Where else would Mr. Shapiro be hearing it
16 except from Mrs. Grant? "I don't know what you have heard
17 but all I did was put in a word for the grandson of a
18 dear old friend."

19 Of course he wouldn't mention money. "All I did
20 was put in a good word for a grandson of an old friend."

21 That shows the contact Mr. Doulin had with Mrs.
22 Grant. The only way Mr. Shapiro heard what was going on
23 behind the scenes was from that phone call from Mrs.
24 Grant because Mrs. Grant assumed Mr. Shapiro was in on it,
25 that Mr. Doulin was able to reach him as well as Mr.

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2 Weissman. That is what that conversation tells you,
3 as well as Mr. Doulin admitting in that conversation that he
4 did do something for Richard Monell.

5 What motive could Mr. Shapiro have for not
6 telling you the truth? I submit to you he doesn't have any
7 motive in this case except to tell the truth. He has no
8 reason to take that witness stand and subject himself to
9 cross-examination unless he is telling you the truth.

10 He was criticized on cross-examination by Mr.
11 Platzman for not reporting Mrs. Grant's phone call at a
12 sooner point. I think Mr. Shapiro's testimony is that he
13 reported it to the FBI in 1973, and I submit to you that
14 when Mr. Shapiro took that stand he knew he was going to
15 be subject to criticism for not reporting it before 1973,
16 but he took the stand and took the criticism, and that's
17 because he was telling you the truth as it happened
18 as best he recalls it.

19 Of course, referring back to the exhibit again,
20 this memo of March 5, 1971, out of the Legal Aid files,
21 it certainly tells you that Mr. Shapiro was giving you his
22 best and accurate recollection of what occurred.

23 Now, who denies this conversation took place?
24 Mr. Doulin denies it took place. Well, interesting.

25 Mr. Doulin called some witnesses, one of them

1 3 GwMch

2 Monsignor Markowski, and the Monsignor testified that he
3 knew William Doulin was a man of good reputation because
4 he had been present when people offered Mr. Doulin money
5 to influence money and Mr. Doulin turned it down.

6 What does Mr. Doulin say in the grand jury?

7 "Nobody ever offered me anything, anything, at any time."

8 So we asked Mr. Doulin, "What is the Monsignor
9 talking about?"

10 Do you remember what Mr. Doulin's answer was
11 late yesterday? His answer was, "Maybe he was talking
12 about vegetables."

13 Vegetables. That was his answer as to what
14 the Monsignor was referring to when people were offering
15 things to Mr. Doulin.

16 And of course you have hear the additional
17 testimony that Mr. Doulin denied -- denied -- that he really
18 knew that Mr. Weissman was actively seeking the position
19 of district attorney in 1971. Well, the letter was read
20 to you. There it is. He knew exactly what was going on.
21 Do you believe that the county chairman didn't know who was
22 trying to seek the position of district attorney in Orange
23 County? Mr. Cohen testified to it that people knew.
24 Do you think that Mr. Doulin didn't know that that was
25 going on at the time?

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2 That is the man who denies the conversation
3 with Mr. Shapiro. That's the man, the man who talked about
4 vegetables and denies knowing that Abraham Weissman was
5 running for district attorney or seeking a position.

6 He is trying to blame everyone else, to point
7 a finger at everyone else, and tell you that everyone else
8 is not telling the truth. Only William Doulin is telling
9 the truth to you ladies and gentlemen, if you believe him.

10 But if you look at the testimony, if you look
11 at Mrs. Grant, if you look at what John Monell had to say,
12 and you look at the indictment in this case and the various
13 charges in each of the counts of the indictment -- I am
14 not going to read it to you now, but I want you to read
15 it carefully, or I ask you to in your deliberations -- you
16 will see that there are numerous counts charging different
17 perjuries before the grand jury, and they go to different
18 subjects.

19 In some cases, Mr. Doulin was asked whether he
20 received money to influence. In another count he was
21 asked whether he had any conversations with Mrs. Grant
22 about Richard Monell. Remember, he even denies the conver-
23 sations with Mrs. Grant. He was asked whether he had
24 conversations with anyone about interceding in Richard
25 Monell's case. You heard that he had a conversation with

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2 Norman Shapiro where he told Norman Shapiro he had
3 interceded.

4 If you look at the counts, you will see that
5 each time he was asked a question he denied everything,
6 and the evidence in this case is as clear as it could be
7 that Mr. Doulin was involved in fixing Richard Monell's
8 criminal case and that there was a payoff to fix the
9 criminal case.

10 I submit to you, as I started at the opening
11 of my summation, that the oath is the most important
12 thing in administering our justice system. We cannot
13 function unless that oath is followed and honored. I
14 submit to you ladies and gentlemen that in this case not
15 only has Mr. Doulin violated that oath beyond a reasonable
16 doubt, he has violated that oath over and over and over
17 again in the grand jury and here in this courtroom beyond
18 any doubt whatsoever.

19 Thank you.

20 THE COURT: Thank you, Mr. Schwartz.

21 Ladies and gentlemen, you will now hear the
22 closing argument on behalf of the defendant, which will
23 be given by Mr. Platzman.

24 You may proceed, Mr. Platzman.

25 MR. PLATZMAN: Thank you, sir.

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2 May it please the Court, Mr. Schwartz, Mr.
3 Jossen, ladies and gentlemen of the jury:

4 We're nearing the end of this case. It's a
5 serious case. It involves a man who you see sitting at
6 the table with me, and by indirection it concerns his
7 family, which is also in the courtroom.

8 The responsibility very shortly is going to pass
9 to you ladies and gentlemen, and each and every one of
10 you, individually and solely, to determine whether this man
11 is guilty of what is charged against him beyond any
12 reasonable doubt, and that is the test. His Honor will
13 instruct you what is meant by that. You must be satisfied
14 to a point of moral certainty --

15 MR. SCHWARTZ: Objection, your Honor.

16 THE COURT: Yes. I will instruct them on the
17 law. I will take care of that in my charge.

18 MR. PLATZMAN: His Honor will take care of that.
19 I am trying to discuss the facts in the frame of the law.

20 If by mistake, if a guilty verdict were to be
21 handed in, it will be a terrible thing. You all recognize
22 that. We have to make sure we really arrive at such a
23 decision, if one were to be made, in light of his
24 Honor's instructions.

25 At the commencement of this trial, we picked you

1 rejected others who were on this panel. We picked you.
2 You are all ages, all walks of life. As a group you all
3 will have definite opinions based on what has happened
4 in your own experience.
5

6 I should like to examine the evidence, review this
7 with you. We have had lots of things that have taken place
8 during the course of this trial that come before us like
9 individual trees and you don't see the relationship with
10 everything else.

11 One of the functions of the attorneys in
12 summation is to do just that, perhaps tie it all in.

13 Before I get into the main aspect of what I
14 want to talk to you about, I want to very briefly talk
15 about some of the things that Mr. Schwartz talks about
16 during his summation.

17 You remember, and I will get back to this in my
18 main argument, the major factor in his case was a payoff
19 and there is no perjury if that wasn't the fact, and
20 we will have to tie everything in. It was the fact he
21 was lying, that he made some kind of a deal, he interceded,
22 and part and parcel with it, completely integrated with
23 it, is this payoff.

24 Now suddenly we hear from Mr. Schwartz the
25 payoff isn't important because during the course of the

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2 trial it will appear that that payoff was impossible,
3 it never took place, and if it didn't take place I
4 submit to you there was no lying.

5 How do you believe the rest of the Government's
6 case if there main position was that there was a payoff?
7 You heard from Mr. Jossen, and I will quote to you what
8 he said to you in his opening, they couldn't reach Doulin,
9 but we will get to that later, how Doulin came back while
10 this man was sitting in jail and then the arrangements
11 were made, and then they went to the bank and then they
12 got the money and took it out, and the same day they went
13 and gave it to Mr. Doulin, who was inside and tan from
14 his vacation. Doulin was in Florida or in Virginia. We
15 will show that to you. Witnesses that don't lie; credit
16 slips.

17 Mr. Schwartz said to you that there was a sudden
18 change of everything that took place. Changes take place
19 all the time in courts, in homes. That is our experience
20 in life. It was an accident that Mr. Moenll was sentenced
21 to an illegal sentence. He got a break. He seems to
22 have gotten breaks all his life of all kinds, a despicable
23 record, and the Government is relying in their case on one
24 person essentially, not on Richard Monell because he
25 didn't supply all the data that they wanted, but it is going

to boil down to the believability of one person, sweet and gentle Flo. And I will show that she was a liar from beginning to end, and it wasn't even possible, this whole story which she remembered so perfectly and repeated over and over again.

I submit to you that what took place at the second sentencing wasn't as Mr. Schwartz described it. I don't recall it that way. It is your recollection. I don't remember that Mr. Weissman said a "responsible citizen." I think he said there were letters or calls. This happens all the time. The probation officer told you that, the judges told you that. People write in on probation. Sometimes a judge accepts it; sometimes he doesn't. The probation officer.

If you don't believe Mr. Doulin in this thing, everybody is a crook, all the judges, all the lawyers --

MR. SCHWARTZ: I object to the use of some of this language.

THE COURT: I have difficulty following that one. I will leave it to the jury. They are listening, and if they understand it, it is their understanding that counts.

MR. PLATZMAN: A statement was also made that the judge was surprised. I don't remember there was any

statement in court that the judge was surprised. You remember that Judge Isseks had before him the record. If you remember, I asked the probation officer what judges use to take into consideration. One of the things judges use, and maybe the judge gave it more emphasis, and there is no sense accusing the judge of anything, is that thirteen years had elapsed and on the record it may have looked aht since there was a mistake, God had willed, perhaps, that he come back again, and so the judge gave him a break. I don't think any greater importance could be put upon it than just that.

Also some mention was made about what happened in the family court. There is no proof in this case at all that Mr. Doulin had anything to do with the family court, and we urge that family courts very frequently, or anybody might be very generous and big-hearted before Christmas time, and the man was sent home. It was a non-support problem. I am sure non-support problems are going for years, and it happens in many of these matrimonial situations. This man was sent home. It was Christmas time. We have all heard over and over again from Mr. Schwartz, yes, it turned out just the way he predicted it would be, or that Mrs. Grant predicted it would be.

I can be a great predictor three years later when

I say, "I told you that was going to happen tomorrow," but I don't tell it to you the day before, I tell it to you five days later. I would be great if I could predict the stock market that way.

Obviously, all of this came to light after this happened. You can always say, "Sure, that is what I predicted was going to happen."

Now, we will get to the question of all these telephone call. I will discuss that in my main argument.

I don't really understand the fuss about this letter of Mr. Weissman who said he didn't want to run. Mr. Doulin gets two thousand letters. Everybody gets lots of letters, but probably he, in his various capacities, in his jobs, and this very wealthy thief, maybe he didn't remember that letter.

He doesn't. He didn't say he didn't get the letter. There is no testimony he never got it. His recollection was that Cohen was at that time battling with Maruiello. Weissman was a weak third, perhaps, and at some point he probably did write a letter which was a very nice sort of a letter. But it only emphasizes one thing.

Is he guilty of perjury now? Do we split hairs every time a man doesn't remember a specific thing? He

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2 couldn't remember it.

3 Should the attorney perhaps, if it were the
4 reverse, be guilty of perjury because when he asked the
5 question, "Did Mrs. Grant tell you about her son?", it was
6 no son, it was a grandson? But the testimony reads "son."

7 We are not -- we cannot split hairs in this court,
8 and on the basis of convicting a man with all of its
9 terrible consequences. And this is what the Government on
10 the thin hearsay, thinly connected case, is trying to
11 show, and I will go through it.

12 There is nothing in this case, not one shred of
13 direct evidence to support such a position, but on
14 the contrary, the direct evidence clearly shows he couldn't
15 have been involved in any sort of a payoff which would
16 constitute the basis of these counts.

17 Now, he mentioned a number of things which were
18 indirect, like the discussion -- the telephone calls that
19 were received, the fact that a year or two or whatever it
20 was later a state policeman went up and spoke to Mrs.
21 Grant and said, "Yes, I know what you want to find out.
22 You want me to talk to you about payoffs."

23 A lot of that could be the manner in which a woman
24 like Mrs. Grant could say it. It could sound like she
25 is saying, "Yes, I gave payoffs to Mr. Doulin, the under-

taker, the friend of the Governor." Not the Governor, but the Lieutenant-Governor, because he knew Mr. Malcolm Wilson, who came here.

I will get to this question of character witnesses, which is and should be an important part, because if a man has a reputation for all of his life, has been in the community for 72 years, born there, his family up there, and people think enough of him to elect him -- to give him positions and to continue to do so even when there are clouds over him, they had that confidence, and so did the people who came here and who could readily have said, "I don't want to be bothered. I don't want to stick my neck out," and men with stature. These men came here from all walks of life, from a fireman to a Governor, came to support this man.

Now, he also talks about the testimony of John Monell, the father. I think you were able to see that man's attitude. He was disgusted. If you didn't see that look of disgust on his face about his boy, Richard, well, I don't know, but his statement, Mr. Schwartz' statement, that the only time he smiled was when he was smiling at Mr. Doulin, I don't know that. I don't know whether he was smiling at Mr. Doulin or anything else was taking place, and I don't know what difference that makes.

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But what he said essentially was that he didn't want to bother with this, and therefore he blocked it out partially from his mind, and all sorts of conversations could have been taking place, and he wouldn't have known the significance or attempted to tie them in. He wasn't a participant in what the Government claims was part of this payoff scheme, and all of these counts go to this one question.

Essentially, they all go back to the focus, was there a payoff? Did Mr. Doulin fix this sentence or did he not?

He says that these two sweet people, Richard Monell and Flo Hall, had no motives in testifying here. I submit they had plenty of motives.

(Continued on next page)

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2 She admitted she was guilty of perjury. She
3 misled the authorities, told them a cockeyed story,
4 what Richard told her to say. She admitted she lied.
5 I'll show you later she was lying here with respect to
6 the main thing in this case, and I submit Richard Monell
7 also had motives. He disappeared. The government brought
8 him back here in September 1974. He was here on three
9 occasions. He didn't wind up in jail. They got him
10 eventually now on the Family Court. He's still out on
11 this. His hearing was conveniently adjourned to December.
12 He has no motive?

13 I'll tell you this. Both of these parties
14 had terrific recollections about specific things that
15 tied this defendant in, but the most miserable recollection
16 about everything else. Richard Monell didn't remember
17 when he got married, he didn't remember anything about
18 his children. Half of his answers, I don't remember. He
19 didn't know when his kids were born, hasn't seen them.
20 That is the man that the government is relying on to
21 build a conviction, to convict this man of being a felon,
22 a criminal who has done nothing but good all his life.

23 A comment was made by Mr. Schwartz concerning
24 Monsignor Markowski who told you -- I'll get to him a
25 little bit later -- who told you how he found and met this

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2 man, how he did good living in a poor neighborhood and
3 helping poor people.

4 He said, and my recollection is, and you
5 may read this -- I just read this again. This is my best
6 recollection. He said that somebody offered him money
7 and he refused, not one word that it was for the purpose
8 of influencing somebody or corrupting somebody. I don't
9 know what it was for, but he refused it.

10 It may have been some business thing that he
11 didn't want to participate, didn't like it, may have
12 considered himself that he would have been bought off if
13 he did it. I don't know. There is certainly nothing that
14 Monsignor Markowski said that would implicate Mr. Doulin
15 in anything like that. On the contrary, that's why he
16 came down here. And he of all people should know him and
17 know people real well.

18 Do you think that that priest that sat on the
19 stand and put up his hand to tell the oath, tell the
20 truth, is going to lie? We will let you decide that.

21 I would like to get to the heart of what I
22 was discussing. I maintain, and I have had this
23 feeling during the trial, that all the protests about,
24 you know, don't have any prejudice by the government are
25 just on paper.

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2 MR. SCHWARTZ: I'll object, your Honor.

3 THE COURT: Yes, I think your feelings are
4 totally irrelevant, counsel.

5 MR. PLATZMAN: All right.

6 THE COURT: And your opinions are likewise
7 irrelevant.

8 MR. PLATZMAN: I would like to draw some
9 inferences.

10 THE COURT: You may do that, of course.

11 MR. PLATZMAN: All right. This is what I
12 shall try to do.

13 It appears that the atmosphere at this
14 point is one of hostility to anybody who is a politician,
15 you know, with Watergate that took place. We don't --
16 we say that all kinds of prejudices, whether they be
17 against firemen or policemen or politicians or carpenters
18 or undertakers, has got to be eliminated. Underneath it
19 all we have to make sure also when you are making these
20 determinations that that doesn't -- that that also extends
21 to people who are in politics. Politics is a necessary
22 part of our democracy. If we didn't have politics
23 and our mechanism by which people are selected for
24 government office who should serve the people, if we
25 didn't have that -- there are countries in the world

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2 that they don't have that -- then you've got dictatorships.
3 Hitler didn't need political parties, neither did others
4 who are all around the world that are like that.

5 Our democracy is founded on exposure to the
6 public, political parties. There are some people that are
7 engaged in politics. Mr. Doulin didn't make that his total
8 life's work. He had to work for a living. There are
9 some politicians it is true who become very wealthy. We
10 know that.

11 What happened to Mr. Doulin? Where do we see
12 this wealth? He is living in a poor neighborhood, still
13 living there. If he gets a car in his funeral business,
14 he buys it second-hand. He lives upstate. He's got very
15 little bank accounts. I think 2 or \$3,000 in two
16 accounts, one for himself, or maybe it is even less than
17 that, and one for his wife. He has nothing. Is this a
18 man who is a thief?

19 Do you think this is the only thing that he
20 ever did in his life if he really did this?

21 No, he would have been collecting money for
22 many, many years. He would have had lots of things, yes,
23 he bought a piece of property in partnership with some-
24 body, paid \$3,000 for investment. All he's doing with it
25 now is paying taxes on it. It's undeveloped.

Is this the wealthy man that you found?

Common sense would tell us that if a man is taking money, where is it? Where are all these people he's supposed to have given money to, all these judges, all these prosecutors, all these policemen, everybody? Where are they? None of them were brought in in this case. We didn't hear from them. The government was able to bring in everybody else.

Now, to accuse or characterize a man of guilt because he's in politics or a politician is like saying that everybody who has long hair must be a drug addict and everybody whose last name sounds Italian must belong to the Mafia. That's absurd.

We ask you to treat this man on his merits and not to absorb the atmosphere of antagonism because of the fact that he's in politics. It isn't the number of witnesses that are called, it's the story, the facts, what happens.

One is not to give greater weight because this represents the United States government, as you see here at this table, the Federal Bureau of Investigation, the United States Attorney. They don't have any holier sanctity than anybody else. Mr. Schwartz, Mr. Jossen are lawyers. They are presenting a case just as my position

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2 is. What he says or what I say is not evidence. What
3 they say and what I say is arguments that we are asking
4 you to think about in making you decision and nothing
5 more. I was brought up to believe that a man really
6 is innocent until he is proven guilty and they haven't
7 proved it. We don't have a democracy unless that is
8 proven.

9 If you believe that he lied as to these
10 counts, then you must also believe that he is a fixer,
11 and that's the key to this case.

12 Now, you may recall -- in passing I had mentioned
13 about the supposed wealth of this man. There was a period
14 of time he held down three jobs. This was no slouch of
15 a man. He worked. He was a fireman for a good portion
16 of his life. He ran a funeral parlor on the side. He
17 had this to make a living, with the three jobs, he even
18 had another one at another point. I don't remember. I
19 think it may have been the Athletic Commission. Even
20 with all these three jobs he hasn't accumulated an awful
21 lot of money. He got small pay.

22 Does a man in politics have to be a fireman
23 for -- I don't know what he said -- a thousand dollars or
24 \$2,000 a year, something like that? Does he have to do
25 that work, endanger himself if he's in politics, an

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2 exerting influence not for good but for bad for himself?
3 Is it consistent? And you have the right to weigh this,
4 to determine that consistency.

5 Now, in this particular case there are seven
6 counts.

7 If Mr. Doulin lied as to any one of them, you
8 would have to believe that he was a fixer. That's the
9 only label that we can use.

10 I can hardly believe that this is the tissue
11 of evidence that was brought forth by the government to
12 ask you to reach the conclusion to that effect.

13 I don't want to go into each of the counts.
14 If you read them, they concern themselves with conversa-
15 tions about getting money from somebody, corrupting
16 somebody. That's the whole tenor of it. When a
17 person is on the witness stand, he doesn't split hairs.
18 He doesn't weigh every word.

19 I will come back to these counts in a moment.

20 Appropos of this, it is very important for
21 you to keep in mind that sometimes when we say things, the
22 words aren't exactly the way you would want to. You
23 and I know many times people dictate something even and
24 it is put down on paper and then we look at it and that
25 isn't the way I want to say it. You correct it. This

1 gwjw 8

2 wasn't the case before the grand jury.

3 When are you going to use that careful
4 analysis of every single word to determine whether a
5 man is lying? You have to reach the conclusion that this
6 is intentional, that when he sat there on that witness
7 stand before that grand jury, that he knew he was lying,
8 that he believed that he was lying, that he said this for
9 the purpose of deceiving that grand' jury. I submit there
10 is no such situation and that you got to take it in its
11 broad aspect.

12 What was he telling this grand jury? He
13 never got any money, never was involved in these crooked
14 deals about passing of money in politics. The witnesses
15 that came here to testify before you completely substantiated
16 this. I only want to make one comment about the counts.

17 You will see that there is a Count 6 -- these
18 were read to you also from the testimony before the grand
19 jury. These counts are really quotations from what
20 happened before the grand jury.

21 Additional material was read to you by counsel
22 which is perfectly proper.

23 But Count 6 starts with one thing, then
24 there is a break and then finished with some more testimony.
25 You look at this.

1 gwjw 9

2 Then Count 7 out of context now because it
3 stands alone is the part that was skipped in the middle
4 of Count 6, separated a question and answer, and then
5 finished Count 6. Then Count 7 now becomes the part
6 that was skipped.

7 If you look at the part that was skipped, it
8 might sound, if maybe if you split enough hairs, it
9 isn't the truth. If you put it back where it belongs and
10 you read the whole thing, one after another, you will
11 see that all he was talking about is, I never spoke to
12 Mrs. Grant or the Monell family to try to fix something
13 for them. You do that when you get to it.

14 Now it might also be significant when he
15 came down to the second grand jury hearing, he came vol-
16 untarily. He didn't come with a lawyer. He didn't
17 plead the Fifth Amendment.

18 Why? If he knew he was going to lie to this
19 grand jury, boy, he would have been on his guard if he had
20 something to hide. He came down, he told the full story.

21 In politics all of us have heard about the
22 Fifth Amendment. He could have said, I don't want to
23 answer. Nobody could have done a thing. They are not
24 charging him in this case with taking money, they are
25 charging him with lying.

1 gwjw 10

2 All he had to do was say, I don't want to
3 answer, Fifth Amendment. He didn't do that. No.

4 I don't say that's the proof of anything except
5 what was in that man's mind.

6 Did he come down and know that he was going
7 to lie to them? If he did, he's an idiot. Obviously
8 he's not.

9 Now, the whole key really is what was in his
10 mind, penny for your thoughts. You have to probe into
11 it. Did he really intend to deceive that grand jury
12 with what he's saying, or after you read all the testimony,
13 is it that you must come to the conclusion that he was
14 trying to tell the grand jury, I was never involved in
15 any crooked schemes and I didn't payoff anybody and I
16 didn't fix any case? He was not in a position to change
17 words afterwards or put in commas so that the meaning
18 is exactly what he intended it to mean.

19 Now, the man that we are seeking to hold as
20 a felon in this case is a man who apparently from the
21 witnesses that appeared here, and apparently his own
22 background, has been brought up all his life in Newburgh,
23 lived in a poor neighborhood, didn't move out with others
24 into the suburbs, as he might have. He continued to help
25 people.

1 gwjw 11

2 As Monsignor Markowski said, people that were
3 poor, he didn't ask them to pay for their funerals.
4 He went -- he lived his life the way he saw it.

5 As Mr. Doulin himself had said, there were
6 many times he didn't ask for money. If he was really
7 a thief and if he really wanted to take money from Mrs.
8 Grant, it's the easiest thing in the world, absolutely
9 the easiest thing in the world legitimately. She owed
10 him money for a funeral, her son-in-law owed him money for
11 a funeral.

12 All he had to do was take the money and charge
13 it to the funeral. He didn't even do that.

14 No dispute about the fact that he buried
15 these people and he never got paid.

16 A lousy \$1500? How many judges and prosecutors
17 did he pay off with \$1500? He could have taken that money
18 in payment of his funeral bill. He never did it.

19 Does it seem to you logical that this really
20 took place?

21 Now, a number of people came in to testify about
22 his reputation. That's a real thing. You have to reach
23 the conclusion that the man is guilty beyond any reasonable
24 doubt. If they testified that this man, as they did --
25 every single one of them and all citizens in all walks of

1 gwjw 12

2 life -- that this man had a good reputation, that fact
3 alone, forgetting about anything else, could justify in
4 you concluding that a man of that type could not
5 commit a crime like this. You have the right to do so.
6 That would be enough alone. We submit there is some real
7 positive evidence that he never could have, and I'm going
8 to get to that as you probably suspect.

9 Who are the people that testified for him with-
10 out exception? A man that worked with him in the Fire
11 Department, that knew him, lived with him. His word was
12 his bond.

13 What he said, right from the shoulder. This
14 is what some of the others had said, too, straightforward,
15 direct.

16 That's why he apparently was liked. He was
17 not liked for any other reason, not for his money. That's
18 for sure.

19 Why do they like him? Why does the population
20 of Newburgh, part of Orange County, like a man like this?
21 Because he's done good all his life.

22 A judge came down from the criminal court.
23 He handles crooks and felons or people who are guilty of
24 crimes. One of the witnesses -- I don't remember which --
25 one of them was in the attorney general's office prosecuting

1 gwjw 13

2 crimes. I don't recall which one. You may remember
3 better than I do.

4 Mr. Wilson, who held a high station in New York
5 State, you may not agree with his politics, some of you.
6 Some of you may be Republicans, some of you Democrats
7 or no political affiliation in either of those categories.

8 Whatever he is, he's a man that was elected
9 many times by the majority of the people of the State of
10 New York. He wouldn't come down here and risk his reputa-
11 tion to testify for a man that wasn't worth it, but he did.
12 Look at the background of that man. I didn't know it
13 until he got on the witness stand. He was a member of
14 the Judicial Conference, a member of other -- in the legal
15 circles, of various things that he did with respect to
16 the law and its enforcement.

17 He's mentally attuned toward monitoring
18 critical behavior of people. That's his attitude about
19 him, a straight honest guy.

20 Father Markowsky, the same thing. Do you
21 think he would come down and tell a lie for anybody?

22 I don't believe it.

23 But apparently the opinion of these people is
24 only reenphasized by the remaining people in the community.
25 They re-elected him now just recently.

1 gwjw 14

2 You have heard testimony, matters been
3 referred to in the newspapers, they knew this. The
4 people didn't believe it. They elected him because of his
5 reputation for honesty, for being trustworthy, for a
6 decent human being. That kind of a human being couldn't
7 possibly have done what they are accusing him of doing.

8 Now, what was the government evidence? I will
9 try to go through these briefly because you have heard
10 them, I have heard them. I want to tie in one or two
11 things. If I do skip a few things that you may consider
12 important, you will consider them yourself without my
13 reference to them.

14 One was Judge Ingrassia. They brought him
15 in.

16 You remember I asked the Judge, "Did Mr.
17 Doulin ever give you any money while you were a DA,
18 assistant DA or a Judge? Did he offer to, did he try
19 and intercede?"

20 No, no, no, no, no.

21 This was true about all the others.

22 I would like to know where are the cases that
23 he did. We only saw the ones that he didn't. Are we
24 going to speculate and think about events that never
25 could have happened without any proof of it? The government

1 gwjw 15

1910

2 is -- they have good resources, good ability to prepare --

3 MR. SCHWARTZ: I object to this. This line
4 of argument is unfair. It is not proper.

5 THE COURT: Yes, it is.

6 I am going to comment on the availability and
7 unavailability of witnesses during my charge.

8 I might indicate to the jury at this time
9 that both sides have the right to interview witnesses
10 at any time before and during a trial and both sides have
11 the right to subpoena or request witnesses to appear in
12 court. I will leave it at that. I will get back to the
13 subject during my charge.

14 MR. PLATZMAN: I accept that.

15 If during the course of the trial or if
16 during the course of my summation I perhaps am a little
17 bit overzealous, I hope you will also pardon that.

18 In the heat of a trial, in the battle, some-
19 times you get overwhelmed with what you are trying to
20 espouse.

21 You will consider the respective positions
22 of the parties with respect to the bringing in of witnesses.
23 We say they didn't bring in anybody and the burden is
24 upon them to prove this case. We would have had to have
25 proved the negative. I don't know how you can do this.

1 gwjw 16

2 You would have to bring in 29,000 people and ask them
3 when you are proving the negative of something. It's very
4 hard.

5 If I say that Johnny Johns held up a store on
6 the corner of Grand Street, that is a specific thing.
7 Johnny Jones can come in say it wasn't on Grand Street,
8 I didn't hold it up, whatever the excuse may be.

9 As you are told when you read this indictment,
10 did you ever at any time, anywhere, anybody, any money --
11 awful lot of anys, you read them -- do this? Where do
12 you start? What do you do except to say no.

13 If there was such a person specifically, where
14 was such a person specifically, where was he? We don't
15 know to whom to look. We couldn't bring in five
16 million people.

17 All we can do is ask those who did come in,
18 one after another, and starting with Judge Ingrassia.

19 But we also had another thing that was intro-
20 duced, that is these telephone calls. Not one person
21 identified that caller or knew her. I submit that you
22 may draw the inference it could have been anybody, and
23 based upon what the testimony was, it would have had
24 to have been somebody else, probably Flo. She could
25 stoop to anything, just as Richard who did everything was

1 gwjw 17
2 clever as hell in spite of everything, sharp enough to do
3 something like saying when he was caught with a robbery,
4 and he himself said so, to check them in for a psychiatric
5 examination. It was a gimmick he said to get out of the
6 robbery thing. That man will do anything and the report
7 shows that. He's a psychopath. Mr. Schwartz told you
8 that. He's antisocial. He doesn't care about anybody
9 except himself. He's against the whole world. He would
10 sell his own mother. In fact, here he sold his own
11 grandmother.

12 That's the kind of a person you are asked to
13 believe, not Mr. Doulin, not Reverend Markowski, not
14 Malcolm Wilson, but you believe Richard Monell.

15 And you believe, by assumptions, not proof,
16 that this must have been the grandmother. It is incon-
17 sistent from what took place. Now, we think probably
18 that these calls, unidentified calls that came into all
19 of these persons, including Mr. Shapiro, Mr. Cohen and
20 Mr. Weissman -- none of them identified -- were probably
21 the same person. But you remember about Mrs. Grant.
22 I'm not saying she was a perfect person. She was an old
23 lady, she knew what happened. You couldn't tell her
24 what to say, what to do. Neither was the judge able to,
25 nor I. I couldn't even ask her any questions hardly.
She had her own idea. and she certainly didn't come

1 down here to lie. If she did, it would have been the
2 easiest thing in the world to trip her up. She said
3 she made calls to some of these people. She didn't
4 remember Ingrassia, although she was not sure. She
5 mixed up Weissman, but it turned out to be eventually
6 Cohen.
7

8 The fact that she didn't remember everything
9 is natural. All of us who get a little bit older, we do
10 forget little things. A minute later, it's on the tip
11 of my tongue. I can't remember it. We remember about
12 it. That's true about all of us. Eventually we all
13 get to that state.

14 I'm sure she might have been sharp about some
15 things and maybe forgot for the moment and then remembered
16 it again. Then she did remember, yes, it was Cohen from
17 Port Jervis.

18 When were those calls made? Before the
19 trial.

20 She wanted to know what was happening with
21 the trial. That was the testimony.

22 How does that tie in with a woman after the
23 trial, after the sentence? That wasn't Mrs. Grant. I
24 submit that it could only probably have been Flo,
25 sweet and gentle Flo, Flo, who admitted she perjured

1 herself. She was arrested twice for assault. Of course
2 all the neighbors were wrong, she didn't beat up the
3 neighbors. This I can see where she might be let go.
4 This is not a great monstrous thing to get into a fight
5 with somebody. She was nice and sweet and demure on the
6 witness stand. You look at her history. Frankly, I do
7 agree that two of them were mated really well. They
8 both deserved each other.

9
10 Now, the same thing when Mr. Cohen was on the
11 stand.

12 I asked him, "Did Mr. Doulin ever try to
13 bribe you?" Without going through the whole list. You
14 remember that.

15 His conversation with this individual on the
16 phone, he didn't identify her either.

17 Now we get to Mr. Shapiro.

18 He referred to what happened in the courtroom
19 at the time of the sentencing and he said -- if you
20 remember, Richard Monell said he turned to Shapiro and
21 said, "What went wrong?" That was Monell's testimony.
22 Shapiro denied that. That never took place. He got a
23 call later that day in the office. Even Mr. Shapiro
24 didn't remember, couldn't identify this woman.

25 I submit to you that Mr. Shapiro did have some

motives in this case.

He testified to the most amazing circumstance that I can imagine, and that is an attempt to tie in Mr. Doulin to this entire case. And that is that Mr. Doulin who was his antagonist in the Surrogates Court race and contributed and was partially responsible for his defeat. As you remember the testimony, this was a bitterly contested campaign. There was lots of antagonism. Mr. Doulin testified, and Mr. Shapiro did not come back to refute that, that he never spoke to him either before or after, that he never exchanged anything. They disliked each other. It was antagonism between the two.

Do you believe that even a friend of his, of Mr. Doulin's, assuming even he were a friend of his, that he's walking through a great big clerk's office and room in one direction and Mr. Shapiro said and he's coming in the other direction and he stops Mr. Shapiro and out of the clear blue he tells him that he's a fixer, that he did something for someone? That is essentially what you have to conclude. Do you believe that?

Add to it now the two of them didn't even talk to each other. They still don't.

1 And why was he doing this to a man that he
2 dislikes? Where are all the other people that he confessed
3 to? Let's see what Mr. Shapiro did, though.

4 He says he had the whole story about this on
5 March 5th, but it couldn't have been Mrs. Grant that
6 called because the caller said this was bought and paid
7 for, but even by the Government's evidence the money
8 wasn't drawn until March 30th. This was March 5th. So
9 whoever said that was saying something that Mrs. Grant
10 couldn't have said, even if you don't believe her. It
11 had to be somebody else.

12 I submit the only gentle person that could have
13 been involved in that was our gentle, sweet Flo.

14 And what did Mr. Shapiro do as an officer of the
15 court who said he got information that there was a fix?
16 Did he do anything?

17 He said, yes, in 1972, a year later. But then
18 that was corrected. It wasn't a year later, it was two
19 years later, in 1973 he woke up. I submit there were
20 reasons why he woke up at that time, and I submit that
21 accounts for perhaps some of the things that were testified
22 to, including this memo which he says was made at that
23 time.

24 Now, I think I covered some of these things that
25

1 GWmch 2

2 I was going to discuss with you in greater detail. I
3 covered them in my discussion concerning the comments of
4 Mr. Schwartz on his opening.

5 But now I would like to get to really the crux
6 of the only -- only -- positive evidence in this case
7 and the only things that counts, because he's a liar,
8 Mr. Doulin is an absolute liar, if he passed money, if he
9 was involved in this fix.

10 Let's see what the Government says, what Mr.
11 Jossen said, when he opened up to you originally. He
12 talked about what had happened, how Monell was arrested,
13 he explains the story, and then how if he went to jail on
14 March 5th, apparently something went wrong and unfortunately
15 Mr. Monell was in jail.

16 Then they tried to get Doulin, they couldn't
17 reach him, and then he says: This is what we are going to
18 prove to you, ladies and gentlemen. Doulin arrived
19 home. The evidence will show that when he returned home
20 he was able to take steps to help Richard Monell on his
21 resentence, to intercede on Richard Monell's behalf in
22 his criminal case, and after Monell got his promised sen-
23 tence of probation, the evidence will show that Mr. and
24 Mrs. Grant drove to their bank in Rosendale, withdrew the
25 sum of \$1,480, leaving their bank account with \$9, and

1 GWMch 3

2 that they took that money and went to Mr. Doulin's place
3 of business, his funeral home, and that the payment was
4 made for a sentence which Mrs. Grant had described as
5 having been bought and paid for.

6 Now, Mrs. Flo Hall -- this is what he says:
7 How will the Government prove it? You are going to have
8 the unique opportunity to hear this from Flo Hall --

9 It was unique all right -- that she drove
10 Mrs. Grant while Richard was in jail waiting for his re-
11 sentence.

12 This is what Mr. Jossen said he was going to prove
13 to you: She was told by Richard's grandmother that Doulin
14 was to guarantee a sentence of probation. She saw Mrs.
15 Grant make phone calls.

16 I would like to know where are all these phone
17 calls, toll calls.

18 Phone calls to the Doulin home in late March,
19 '71 -- in late March '71 -- and Mrs. Grant told Mrs.
20 Hall it would cost nearly all the money Mrs. Grant had in
21 her bank account to get Richard out of jail. And then
22 Flo drove -- this is Jossen talking -- Mr. and Mrs. Grant
23 to their bank. And where did Flo drive with Mrs. Grant?
24 The evidence will show she drove with Mrs. Grant to the
25 Doulin-Zillig Funeral Home, the funeral home run by Mr.

1 GWmch 4

2 Doulin, that Mrs. Grant got out of the car, went into the
3 funeral home, she got back into the car, and the evidence
4 will show the money was left with Mr. Doulin to pay off
5 for Richard Monell's suspended sentence.

6 I will come to the fact that it was impossible.

7 Of course, Flo Hall went a little beyond what
8 Mr. Jossen promised he was going to supply to you.
9 Let's see what Flo Hall says about this.

10 On at least -- I have them marked off here. I have
11 at least six tabs throughout. I am sure you will remember
12 them. I am only going to read one or two points where
13 Flo Hall went through the elaborate description and
14 repeated it and repeated. This was a pat story. This is
15 what she had to say.

16 She said while Richard was in jail and in
17 between the two sentences -- she said it was about three
18 weeks after he went to jail, which would have brought it
19 just before the March 25th date -- I will sum it up in a
20 moment and then read portions for you -- that in between
21 Mrs. Grant had reached Mr. Doulin, had spoken to him, that
22 they went to the bank, that she went along with them, Mr.
23 and Mrs. Grant, she sat in the car, Mr. Grant parked the
24 car, she went across to the bank -- one of them went to the
25 bank, I don't remember which -- I will read it -- they drew

1 5 Gwch

2 it out, had it in an envelope, threw it at her, something
3 like that, and they drove right from there or the next
4 morning, I can't recall now, to Mr. Doulin's funeral
5 home, gave him the money and she came out, if you remember,
6 and said, Mr. Doulin was busy, he had company, she couldn't
7 stay too long, but he looked great, she gave him the
8 money, that is all the money she had, and now Richard had
9 better behave himself.

10 And what did she testify to when she was asked
11 about when this happened?

12 "When was that?"

13 This was on direct examination in answer to
14 the Government's questioning.

15 "It was during the third week that Richard was
16 in jail.

17 "Where did the conversation take place?

18 "In Mrs. Grant's.

19 "Was anyone else present at the time?

20 "I'm not sure.

21 "What did Mrs. Grant say? Tell us that.

22 "She said she just spoke to Doulin and he told
23 her that he needed some money, some to give to someone
24 else."

25 There are other people involved in this fix

1 GWmch

2 with this \$1,500.

3 "She told me that -- asked me if I wanted to go
4 to the bank with her and Mrs. Grant and I said yes.

5 "Did there come a time, Mrs. Hall, when you went
6 someplace with Mr. and Mrs. Grant?

7 "Yes.

8 "Do you recall when that was in relation to the
9 conversation?

10 "Yes. I believe it was the following morning."

11 There is where I got the concept of the
12 following morning.

13 "And where did you go?"

14 This is the following morning after the conver-
15 sation with Mr. Doulin, presumably, that that Doulin said
16 he wanted money, that he needed it for himself and for
17 somebody else, and they went to the bank in Rosendale.

18 "What's the name of the bank?

19 "Orange & Rockland.

20 "Who went to the bank? Who drove?

21 "Mr. Grant.

22 "Who, if anyone else, was present in the car?

23 "Mrs. Grant and myself.

24 "What, if anything, did you see and do?"

25 This is all questioning by the Government counsel.

1 7 GWmch

2 "Mr. Grant got out and went into the bank. When
3 he returned he gave Mrs. Grant an envelope which she put
4 in her pocketbook.

5 "What did you do at that time, if anything?

6 "Mr. Grant drove to Newburgh.

7 "Where in Newburgh did you drive?

8 "We went to the Doulin Funeral Parlor.

9 "What was the name of it," et cetera. "Where
10 is it located? When you arrived at the funeral parlor
11 what happened?

12 "Mr. Grant parked across the street and Mrs.
13 Grant got out and went into the funeral parlor. A short
14 time later she returned to the car.

15 "What, if anything, did she do?

16 "She said she gave the money to Mr. Doulin and
17 she said she didn't stay very long because he had business,
18 people there and that he was tan and he looked very good
19 after his vacation."

20 And some more of that same thing.

21 I am running short on time a little bit, so I
22 am going to rush this portion of it.

23 And on cross-examination I asked her again, very
24 similarly to what counsel asked her, to tell us when she
25 spoke to Mrs. Grant about paying money.

"I'm not positive of the date, but I think it is the third week that Richard was in jail."

I agree with counsel, you can't always remember exact dates but you could remember an event that ties it in, and this was between the sentences.

And I asked her:

"And that would be just prior to the resentencing, is that your best testimony?"

"A Yes."

Richard was in jail and they were anxious to get him out. This man was going to fix the judge, district attorneys. He wanted his money before the sentence. Otherwise how could he get it. Of course he couldn't charge it to the funeral home as a payment.

Then a discussion of what went on. She said, "When I walked into the house" -- she was talking about Mrs. Grant was just on the telephone. We refined this a little bit.

-- "she told me she had just been speaking with Mr. Doulin and he asked her for the money and she had only a little bit left in the bank.

"Did she tell you how much?"

"She told me how much she was going to give Mr. Doulin.

"What did she say?

"She was going to give him about \$1,400.

"What else?

"She asked me if I wanted to go with her."

Essentially it was the same thing. They went to the bank, a little more detailed perhaps, but it was a repetition over and over again, and after Mr. Grant came out he dropped the envelope in Mrs. Grant's lap and then they went to the funeral home, the same story, she was in there for a very short time, et cetera, and she gave him the money.

Of course, it couldn't have been prior to resentencing because we know the money wasn't drawn out until March 30th. But obviously then it couldn't have had anything to do with the resentencing. This was a make-up. She didn't know that.

The best witnesses in this case, absolutely the most reliable witnesses in the case are the documents. Not documents that one of these people prepared or that Mr. Doulin might have prepared or Mr. Shapiro might have prepared or something else. There always may be problems with that.

But the credit cards, where this man went and where he was. And I would like to -- and you will take

those credit cards, if I may suggest, you may ask for them if you want to, but I say that this man was not in Newburgh. He was in Florida when all of this was supposed to have taken place, and therefore could never have taken place, and you will see that -- oh, yes, one thing I forgot to mention in this regard is that counsel at great length pointed out it could be -- maybe he took a shorter vacation, et cetera, and may have gotten back sooner. But the records belie this.

I am pressed for time now so I will skip over these, but you will see he was still in Newburgh on February 24th. So he left rather late, not February 15th. So you will see he didn't return -- the first gas purchase in Newburgh was on April 5th and that on days like April 1st he was in Raleigh, North Carolina, and at the end of March he was in Florida. I believe he didn't start back from Vero Beach until April 1st. He still purchased gas in Florida at Vero Beach.

So we are going to ask you to look at these records and recognize what they really mean in light of what the Government said he was going to prove to you and what they have proved. It is the only positive proof in this case, unless you want to disbelieve all of this and accept the testimony of our sweet and gentle Flo.

Now, in closing, I would like one or two final thoughts of the seriousness of this case, what it has meant, what it could mean. You have an individual responsibility to make these decisions. But that really means an individual responsibility that you have to reach a conclusion that this man is guilty beyond any reasonable doubt as instructed by the Court, and if you believe that to be true after considering this, we all like agreement, that is true, but if you believe it to be true, it shouldn't be compromised away for any other purpose, more people may disagree with you, somebody says it is getting late and let's compromise.

A compromise would do violence to your oath. We are asking you, as a human being, to search your souls and your conscience and to bear in mind the consequences of a mistaken verdict, what a terrible fate this would be for a man who knows he is innocent and knows he is not guilty, the kind of irreparable harm that something like this could bring about.

Frankly, I too am somewhat tremulous and fearful that maybe I left out something, maybe I should have said something that I forgot about. If I overlooked anything, I ask you to think about it yourselves and recognize it and analyze it in a way that would be consistent

with what has happened on this trial.

I feel satisfied that a man like this shouldn't be subjected to such a thin charge and he has to come to court and support his position in this bland way.

The Government spoke first and the Government speaks last. I hope that is not going to affect your decision. I hope you didn't make up your mind -- I am pretty sure you didn't -- when Mr. Schwartz finished talking, but by the same token, Mr. Schwartz is going to speak to you once again, and perhaps I have tried to intimate some of the things he might say to you, but if I haven't, I hope you will try to remember some of the things I said and perhaps you will supply the gaps.

Finally, and now I conclude, the responsibility is yours. We ask you, in all good conscience, to bring in a verdict of not guilty.

THE COURT: Thank you, Mr. Platzman.

Ladies and gentlemen, you will now hear finally from Mr. Schwartz, who will sum up in rebuttal.

MR. SCHWARTZ: Thank you, your Honor.

Please forgive me if I jump from point to point. That may become necessary, having taken down some notes.

I want to begin almost where I began in the opening summation, that is, with the payoff. The

Government doesn't suggest to you for a moment that that payoff didn't occur. What I submit to you is that what is critical in this case is that the state case was fixed and it doesn't matter whether money passed hands to fix the state case or whether influence is used. As I stated to you earlier, the Government doesn't contend that Mr. Doulin took \$1,480 and split it with other people. The Government contends he took \$1,480 and kept it for himself and then used political influence to influence Mr. Weissman. There is no claim on the Government's part that he was spreading money around to anyone.

You heard from Mr. Platzman's summation about the character witnesses from all walks of life; five politicians, a monsignor and a fireman. I submit to you that the testimony in particular of Monsignor Markowski goes to the heart of some of the issues in this case. He was present when money was offered to Mr. Doulin and again Mr. Doulin's response, his explanation for those conversations, something to do with vegetables, tells you that you are not getting candid answers from Mr. Doulin here, and the grand jury didn't get candid answers from him.

Somahow Mr. Platzman injected Watergate into this and politicians and politics being a dirty word.

Nobody is claiming that.

What we need is honest politicians and that's all the Government submits to you on that point.

There is a claim that we are splitting hairs here, that somehow the questions put to Mr. Doulin were such that the answers he gave were just splitting hairs, that is why he ended up being charged.

Well, ladies and gentlemen, the same questions and answers that are in the indictment were read to Mr. Doulin by Mr. Platzman during Mr. Doulin's direct examination, and from the witness stand Mr. Doulin gave the same answers that each of the answers he gave before are just as true now as they were before.

If anybody was splitting hairs, if he had any explanation as to why he thought the questions were unfair, you could have heard it right then and there. Not a word about it. He said the answers he gave then are the same answers he would give now.

To the claim that there was some unfairness about the questions is ridiculous. If you look at the questions in the indictment you will see some of them specifically refer to the Monell case. Yes, there are general questions to find out about other matters, but also specific questions about Monell. Nobody was splitting hairs and, as I said,

1 if Mr. Doulin thought that, he had an opportunity to tell
2 you that when the questions were read to you by Mr.
3 Platzman.
4

5 Along those lines, the counts in the indictment,
6 as you will see when you get the indictment, are sub-
7 stantially according to subject matter. The fact that
8 there may be an excerpt from one area put in a different
9 court -- I understand that is what Mr. Platzman was
10 saying -- if you look at it, I think you will see that the
11 indictment is along logical lines of subject matter.
12 On each subject that was covered the answers were given,
13 and it is alleged those answers are false.

14 There has been a lot of reference by Mr. Platzman
15 to Florence Hall and characterizing her in a number of
16 different ways. I submit to you he hasn't given you a
17 single reason to explain why she would not be truthful
18 here. He has accused her of making a telephone call, of
19 calling and saying she was Mrs. Grant when Shapiro got
20 the call, without any logical explanation as to why
21 something like that would happen.

22 Why would she do that? There is just no reason
23 in the world for it, and it is ridiculous to contend
24 that Florence Hall or anybody but Mrs. Grant was making
25 those telephone calls.

As to the credit card record, ladies and gentlemen, the opening that was made to you was described as a roadmap. It was told to you it was an outline of what to expect. Those credit card documents are Government exhibits. We put them in evidence for you to see.

The evidence shows from the witness stand that the payoff may have been on a different day, not that the payoff wasn't made, that it may have been a different date.

That's a far cry from saying that the payoff didn't occur.

And if something didn't happen in this case, how do you explain Richard Monell getting out of jail on March 26th? How do you explain his five-year probation?

I said earlier that those credit cards, they are a smoke screen to direct your attention away from what really happened in Orange County and in Newburgh and Goshen during March 1971, and that's all they do. They don't explain how Richard Monell got probation.

What explains that is the testimony of Richard Monell; the testimony of Mrs. Grant and how inconsistent she was and how dishonest she was to you from that witness stand; the testimony of John Monell that he knew and that Mrs. Grant told him that she was making calls to Mr. Doulin, that she was seeing Mr. Doulin whenever Richard Monell was getting into trouble. As I

1 said earlier, that must have been on numerous occasions
2 from what we heard about Richard Monell.
3

4 To believe that with all those problems she dis-
5 cussed things with Mr. Doulin but never discussed Richard
6 Monell is beyond belief, I submit to you.

7 Norman Shapiro, again, the only motive that
8 has possibly been suggested that he might not be telling
9 you the truth is some bitter campaign that occurred I
10 think approximately eight years ago. To suggest that
11 is a motive for coming in here now and testifying, whether
12 that would cause somebody to fabricate a document, I
13 think that falls of its own weight. In fact, I submit
14 to you it falls of its own weight.

15 One of Mr. Doulin's own character witnesses,
16 I think it was Mr. Ryan, said that one of the traits that
17 Mr. Doulin had was he always buried the hatchet after a
18 bitter or tough political fight, never stayed enemies
19 with a political opponent.

20 They want you to believe Mr. Ryan but they also
21 want you to believe that when it came to Norman Shapiro
22 they didn't bury the hatchet.

23 I think it is clear that that conversation took
24 place and the explanation is a simple one. Mr. Doulin
25 was afraid that Mrs. Grant had said too much, that she re-

vealed too much to Mr. Shapiro, who obviously was not a friend of Mr. Doulin, and Mr. Doulin had to go around and make sure that things were covered up and smoothed over and that it ended right there. So all he did is say what sounded at that time to him, I am sure, very innocent, "Look, all I did was put in a good word for the grandson of an old friend, no matter what you have heard."

The only way Mr. Shapiro heard anything was from Mrs. Grant herself. The only way Mr. Doulin knew that was because he had to be talking to Mrs. Grant.

Mr. Platzman has told you how important it is you obey your oath, and I submit that's really what all of this case is about. I have said it a number of times and I think it bears repeating. This indictment charges that the oath was violated over and over and over again during the course of the investigation, that Mr. Doulin didn't tell the truth when a grand jury was trying to get facts from him.

Ladies and gentlemen, if the oath can be violated, if the oath can be abused, if the oath isn't respected, then there is no way to get justice for individuals, there is no way to have some orderly process to find out where the truth lies, and that's what your function is.

I submit to you ladies and gentlemen the evidence in this case is overwhelming. I said it before; I say it again. Not only is Mr. Doulin guilty beyond a reasonable doubt, he is guilty beyond any doubt whatsoever.

Thank you.

THE COURT: Ladies and gentlemen, you have now heard the summations of counsel. I note the hour, and I would suggest that it would be best for us to take our luncheon recess at this time to give you an opportunity -- you have been sitting in the box for several hours now -- to have your lunch and then return and upon your return I will deliver my charge.

The evidence is in, the summations have been heard. However, you have yet to hear my charge on the law. Therefore, I will admonish you once more: Please do not discuss the case among yourselves. As you come and go, please avoid any persons in the vicinity of the courtroom who may be discussing the case.

Should you learn anything about the case from any source outside of the courtroom during the recess period, you are directed to report the matter to me at once.

Finally, please keep an open mind on all facets of the case until the case has been concluded and given

to you following my charge this afternoon.

The jury is excused for lunch. You are directed to return at 1:45 p.m. It is now twenty minutes of 1:00. Your lunch hour will be one hour and fifteen minutes, and I would appreciate your being prepared to go, as you always have been, timely at 1:45 p.m.

The jury is excused for lunch.

I will ask those in the courtroom to wait until the jury has had a chance to file out and take the elevators down and out of the building.

(The jury leaves the courtroom.)

THE COURT: Those of you who do leave -- I speak to the spectators now -- if you should be in the same elevator with members of the jury, please do not have any discussions relative to the case. Just about two minutes should permit the jurors to get their hats and coats and then to take the elevators.

Thank you very much.

(Luncheon recess)

A F T E R N O O N S E S S I O N

1:45 P.M.

(In the robing room)

THE COURT: Good afternoon, gentlemen.

Mr. Schwartz.

MR. SCHWARTZ: The reason I asked for a moment before you charge the jury, your Honor, Request No. 24 is failure to call witnesses by either side, no inference. That's the government's Request No. 24.

THE COURT: Yes.

MR. SCHWARTZ: The government has not submitted nor do we have a request nor do we seek a request on unavailable witnesses.

However, we thought it might be appropriate for the Court to add to Request No. 24 that it does not apply to Mr. Weissman who, of course, there has been testimony is deceased.

MR. PLATZMAN: He's dead. It has been stated before the jury a number of times. I don't see why that has to be emphasized. I don't see how any jury can conclude that either side could bring up a dead witness. I don't think there should be any necessity of doing

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2 that.

3 One thing I never got to, Judge, was requests
4 to charge. I just managed to get this one.

5 Other than what I had referred to in connection
6 with the reference to materiality of the jury, one other
7 thought about a request, that where the question is
8 vague and indefinite and an unresponsive answer, even
9 if it were to mislead the jury, would not be perjury.

10 THE COURT: You do not have that in this
11 case.

12 MR. PLATZMAN: There are questions that are
13 pretty vague.

14 THE COURT: I do not think that is a subject
15 for a specific charge. If you give me a written request
16 on it, I will study it.

17 (Pause)

18 THE COURT: Mr. Platzman, reviewing the
19 government's request, you will note Request No. 15, page
20 2, talks about the concepts of knowingly and wilfully
21 being opposed to the idea of inadvertent or accidental
22 misstatements.

23 I think that the sentence that follows, "For
24 example, if a defendant by innocent mistake, made an
25 erroneous or incorrect statement, he would not be guilty

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2 of the crime of perjury. If he made an erroneous and
3 incorrect statement due to a slip of the tongue or bad
4 memory or through misunderstanding, he would not be
5 guilty of "knowingly and wilfully" making a false state-
6 ment.

7 I think that language is about the most you
8 could reasonably expect in connection with the charge
9 here.

10 MR. PLATZMAN: I'm --

11 THE COURT: You are talking about the question
12 being unclear, but in the context of this case the witness
13 never said that it was unclear. He did say on being
14 shown a transcript of his first examination that he didn't
15 want to change anything. He was told if there was any-
16 thing that was unclear, he could say so. And under the
17 circumstances I think that a charge along the lines you
18 indicate would be inappropriate.

19 Anything else, gentlemen?

20 MR. SCHWARTZ: No, your Honor. Thank you.

21 MR. PLATZMAN: No, your Honor. Thank you.
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CHARGE OF THE COURT

Judge Ward

(In open court - jury present)

THE COURT: Good afternoon, ladies and gentlemen.

It is the custom in this court that the juror seated in Seat No. 1, in this case Mr. John B. Kivlehan, serve as the foreman of the jury. His function is to preside at the jury's deliberations, and if the jury has any requests or questions, he is to see that they are written out and sent out via the marshal who will attend the jury. I will get those requests, confer on them with counsel and try to respond to them wherever appropriate.

In addition, the foreman shall take the vote of the jury and once the jury has reached a verdict, he will report that verdict in open court.

Mr. Foreman, ladies and gentlemen:

We come now to that part of the case where the evidence is in, the lawyers have presented their summations and you are about to exercise your final role, which is to pass upon and to decide the fact issues which are present in the case.

2 You are the sole and exclusive judges of the
3 facts. You pass upon the weight of the evidence, you
4 determine the credibility of witnesses, you resolve such
5 conflicts as there may be in the evidence and you draw such
6 reasonable inferences as may be warranted by the testimony
7 or exhibits in the case.

8 My function at this point is to instruct you
9 as to the law which is applicable to the case. It is
10 your duty to accept the law as I state it to you in
11 these instructions whether you agree or disagree with my
12 view of the law.

13 You will then take the law as I state it to
14 you in these instructions and apply it to the facts as
15 you find them. The logical result of the application
16 is the verdict in the case.

17 Just as I am the exclusive judge on the law
18 you, ladies and gentlemen, are the exclusive judges of
19 the facts. You and you alone decide what weight, what
20 effect and what value you will give to the evidence.
21 You decide whether or not you believe a witness or do not
22 believe a witness. And, of course, you ultimately deter-
23 mine the guilt or innocence of the defendant on trial
24 before you.

25 You are not to conclude from any ruling that

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2 I have made during this trial or any questions that I
3 have asked that I have any opinion one way or the other
4 as to the guilt or innocence of Mr. Doulin. The decision
5 as to guilt or innocence is exclusively yours.

6 Any questions which I have asked during the
7 trial or your interpretation of the tone of my voice or
8 any expressions on my face should not be taken by you
9 as an expression that I have any opinion as to the veracity
10 of a witness or his or her credibility or to the merits
11 to one side or the other of this case.

12 You alone are the triers of the facts in this
13 case. You alone are charged with the ultimate respon-
14 sibility of determining the guilt or innocence of the
15 defendant.

16 I have said it several times. I will say it
17 again. It is your recollection of the evidence that
18 controls. It is not the way I may have remembered it,
19 it is not the way that counsel have remembered it, it is
20 your memory.

21 If your memory squares with the lawyers'
22 memory as they have argued the evidence to you in their
23 summations, you may accept their version of the evidence.
24 But to the extent that your memory differs from their
25 memory, you are bound by your oath to rely on your own

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2 memories.

3 You should bear in mind that questions asked
4 by counsel or even by the Court are not evidence and should
5 only be considered if the witness agrees with the facts
6 contained in the questions.

7 You should also remember that any testimony
8 that was stricken is not evidence, and you are bound to
9 disregard whatever responses were stricken by direction
10 of the Court.

11 In the event you do not recall some portion
12 of the testimony, you may by a note sent out through your
13 foreman and through the marshals request that any portion
14 of the testimony be read back to you. You will then be
15 brought into the courtroom for whatever portion of the
16 testimony you find necessary to have read to you to
17 refresh your recollections. That will be done by the
18 court reporter here in the courtroom.

19 Likewise, should you wish to have any exhibits
20 which have been received in evidence sent into the jury
21 room, you need only request them, and upon your request
22 any document, any written exhibit which has been received
23 in evidence will be sent into you as promptly as possible.

24 You find the facts. Finding the facts is
25 merely a process by which you, the jury, consider the

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2 exhibits and the testimony of all the witnesses. You
3 sift out what you believe. You weigh it in the scale of
4 your reasoning powers and draw such conclusions as your
5 experience and common sense tell you the evidence supports
6 and justifies, and you decide just where the truth lies
7 in this case.

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2 You will recall that I told you at the outset
3 the defendant was indicted.. There is an indictment.
4 The indictment is merely an accusation, a charge. It is
5 not evidence or proof of the defendant's guilt. The
6 Government has the burden of proving the charges against
7 the defendant beyond a reasonable doubt. It is a burden
8 that never shifts and remains upon the Government throughout
9 the entire trial. A defendant does not have to prove his
10 innocence. On the contrary, he is presumed to be innocent
11 of the accusations contained in the indictment. The
12 presumption of innocence was in his favor at the start
13 of the trial, continues in his favor throughout the trial,
14 is in his favor even as I instruct you now. It remains
15 in his favor during the course of your deliberations in
16 the jury room. It is removed only if and when you are
17 satisfied that the Government has sustained its burden
18 of proving the guilt of the defendant beyond a reasonable
19 doubt.

20 What is a reasonable doubt? It is a doubt
21 based on reason which arises from the evidence or lack of
22 evidence in the case. It is a doubt that appeals to your
23 reason, to your judgment, to your common understanding
24 and your common sense, such as would cause you to hesitate
25 to act in matters of importance in your own daily lives.

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2 But it is not caprice or whim or speculation. -- is not
3 an imagined doubt or a fanciful one. It is not a doubt
4 that a juror might conjure up to avoid the performance
5 of an unpleasant duty. It is not sympathy for the
6 defendant.

7 The burden is on the Government to establish
8 the guilt of the defendant beyond a reasonable doubt.
9 It is not necessary for the Government to establish the
10 guilt of the defendant to an absolute certainty or beyond
11 all possible doubt. If that were the rule, few people,
12 however guilty, they might be, would be convicted. It is
13 practically impossible for a person to be absolutely
14 and completely convinced of any controverted which,
15 by its nature, is not susceptible to mathematical certainty.
16 Thus, the law is such that in a criminal case it is enough
17 if proof that a defendant is guilty be established beyond
18 a reasonable doubt, not beyond all possible doubt.

19 The indictment in this case contains seven
20 separate counts which you must consider. Each separate
21 count charges a separate crime. Each count will be con-
22 sidered separately and voted on separately.

23 The indictment charges Mr. Doulin with violating
24 Title 18, United States Code, Section 1623, the perjury
25 section. The statute reads in pertinent part as follows:

1
2 "(a) Whoever under oath in any proceeding
3 before any grand jury of the United States knowingly
4 makes any false material declaration" -- and now I
5 interpolate -- "commits a crime."

6 Simply stated, that crime, perjury, is the
7 wilful giving of false testimony as to a material matter
8 before a grand jury while under oath.

9 In order to sustain its burden of proof under
10 any of the seven counts of this indictment, the Government
11 must establish beyond a reasonable doubt each of these
12 essential elements as to that count:

13 1. That the defendant took an oath to testify
14 truthfully before the grand jury.

15 2. That the defendant made false statements
16 as to matters about which he testified under oath as set
17 forth in the indictment.

18 3. That such false statements were wilfully made
19 in that at the time the defendant made these statements
20 to the grand jury he knew them to be false.

21 4. That the matters as to which it is charged
22 he made false statements were material to the issues under
23 inquiry by the grand jury.

24 In the present case, the evidence shows, and
25 there is no dispute, that Mr. Doulin appeared before

1 lawfully constituted grand juries in this district
2 on June 25, 1973 and on February 12, 1975, and that on
3 each occasion he took an oath before the grand jury that
4 he would testify truthfully.
5

6 The evidence also shows that Mr. Doulin gave the
7 testimony that he is alleged in the indictment to have
8 given.

9 You will recall he stated on the stand that
10 he had been asked certain questions and gave certain
11 answers. I will state to you that when those questions
12 and answers were put to him, they were being read from
13 the indictment. So there is no question but that he gave
14 the testimony which is alleged in the indictment to have
15 been given.

16 There will be issues for you and I will get to
17 them a moment or two.

18 I further charge you, as a matter of law, that
19 the matters about which Mr. Doulin testified as set forth
20 in the indictment were material to the issues under
21 inquiry by each grand jury before whom testimony was given.

22 The issue of materiality is for the Court to
23 determine and is not a question of fact for the jury.
24 Therefore, you need not concern yourselves with the first
25 and fourth elements that I have just outlined to you.

You must direct your attention to the second and third elements.

These elements raise the following questions for you to consider with respect to each count of the indictment:

1. On the second element, was any part of the testimony given by the defendant set forth in the particular count of the indictment you are considering false?

In connection with your consideration of this case, I shall give to your foreman, upon commencement of your deliberations, a copy of the indictment in this case.

2. On the third element, if you find any part of the defendant's testimony as set forth in any count or counts of the indictment to be false, you must answer the question: Did the defendant give any part of that testimony knowing at the time that it was false?

If you find beyond a reasonable doubt that the answer to both of these questions for any count is yes, then you should find the defendant guilty on that count. If, on the other hand, you are not satisfied beyond a reasonable doubt that the answer to both those questions for any count is yes, then you must acquit the defendant on that count.

1 The Government satisfies its burden of proving
2 the falsity of the testimony in a particular count if
3 you find beyond a reasonable doubt that any part of the
4 testimony cited in that count is false and, of course,
5 also, if you find that the defendant gave such testimony
6 knowing at the time that it was false.

7 The counts in the indictment, you will note,
8 contain answers given by the defendant reciting more than
9 one fact. It is not necessary that the Government prove
10 that each of these facts or statements is false, but
11 it is sufficient if the Government proves beyond a reasonable
12 doubt that at least one factual statement as to each count
13 is false and, of course, that the defendant knew at the
14 time that that factual statement was false.

15 I have told you that the Government must prove
16 its case beyond a reasonable doubt, and I have explained
17 to you what we mean by reasonable doubt.

18 The Government is not required to prove its case
19 by any particular number of witnesses or by documentary
20 or any other particular type of evidence.

21 You will recall that in setting forth the elements
22 that constitute the crime charged in this indictment,
23 I said that before you could convict the defendant you
24 must, as one of the elements, find beyond a reasonable doubt
25

2 that the defendant acted knowingly and wilfully. Thus,
3 the perjury statute provides that the defendant is guilty
4 of a crime when he "knowingly makes any false, material
5 declaration."

6 I direct your attention to the words "knowingly
7 and wilfully," for the question is what do these words
8 mean? There is nothing mysterious or complicated about
9 the words "knowingly and wilfully."

10 First, let me instruct you as to what these words
11 do not mean. They do not mean that the Government has to
12 show that the defendant knew he was breaking a particular
13 law before he can be convicted of a crime. They do not
14 mean the Government has to show that the defendant intended
15 to profit at the expense of the Government or any other
16 person, nor do they have anything to do with the defendant's
17 personal or private reason for violating a statute. For
18 if after considering all the evidence in accordance with
19 my instructions to you, you come to the conclusion that
20 the defendant violated the statute involved here, then,
21 and in that event, the defendant's personal or private
22 reasons for violating the statute are of no consequence
23 so far as his guilt is concerned.

24 I instruct you that these words "knowingly and
25 wilfully" mean deliberately, they mean intentionally.

1
2 In other words, "knowingly and wilfully" mean that the
3 defendant made the false statement or statements with
4 knowledge that the statement or statements were false,
5 that he intended to make the false statement or statements
6 consciously and in the free exercise of his will.

7 The words "knowingly and wilfully" are opposed to
8 the idea of an inadvertent or an accidental misstatement.

9 For example, if the defendant, by innocent
10 mistake, made an erroneous or incorrect statement, he would
11 not be guilty of the crime of perjury. If he made an errone-
12 ous and incorrect statement due to a slip of the tongue
13 or bad memory or through misunderstanding, he would not be
14 guilty of knowingly and wilfully making a false statement.

15 But if, at the time the defendant gave testimony
16 before the two grand juries, he was aware of the fact
17 that he was making a false statement, and if he knew and
18 believed that his statement was false at the time he made
19 it, then he was acting knowingly and wilfully as these
20 terms are used in the statute governing the crime of
21 perjury.

22 It has been stated frequently that you bring
23 into the jury box with you the common sense and experience
24 of your own daily lives. It is obviously impossible
25 to ascertain or prove directly what was the operation of

2 the mind, the intention of the defendant. You cannot
3 look into a person's mind to see what his intentions are
4 or were, but a wise and intelligent consideration of all
5 the facts and circumstances as shown by the evidence
6 and the exhibits in the case will enable you to infer with
7 a reasonable degree of accuracy what were the defendant's
8 intentions at the time he gave the testimony involved in
9 this case.

10 Intent involves a mental attitude. With a
11 knowledge of definite acts and surrounding circumstances,
12 you may draw definite and logical conclusions.

13 In our everyday affairs we are continuously called
14 upon to decide from the actions of others what their
15 intentions are. Experience has taught us that frequently
16 actions speak louder than words, and that the circumstances
17 surrounding an act or statement can give us insight as to
18 the character of that act or statement.

19 Therefore, you may rely on the facts and circum-
20 stances surrounding the testimony of the defendant in
21 determining his state of mind when he gave it. For
22 example, if you find that the defendant made two or more
23 false statements in the grand jury, you may consider such
24 repetition as evidence of wrongful intent and as evidence
25 that the defendant knew that the statements were false.

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2 Thus, if you believe that the defendant made
3 more than one false statement before the grand jury, each
4 one may be used to infer that the defendant acted knowingly
5 and with wrongful intent. You may consider whether the
6 defendant had a motive to lie or to conceal a fact. The
7 Government is not required to prove the existence of such
8 a motive, let alone exactly what the motive was, but
9 if you do find evidence of a motive, that may help you
10 decide what the defendant's state of mind was.
11 Therefore, you should ask yourselves whether the defendant
12 stood to gain any personal benefit from concealing the
13 truth or whether he stood to suffer any personal liability
14 or difficulty if the truth were told.

15 I charge you that proof of motive is not a neces-
16 sary element of the crimes with which the defendant is
17 charged. Proof of motive does not establish guilt nor does
18 lack of proof of motive establish that a defendant is
19 innocent. If the guilt of the defendant is shown beyond
20 a reasonable doubt, it is immaterial what the motive
21 for the crime may be or whether any motive be shown, but
22 the presence or absence of motive is a circumstance which
23 the jury may consider as bearing on the intent of the
24 defendant.

25 In this case, you have heard during the past

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2 seven trial days both direct and circumstantial evidence.
3 It is not unusual to hear both types of evidence,
4 particularly where there are issues which are difficult
5 to resolve by resort to direct evidence. Instead, in
6 such circumstances, circumstantial evidence is usually
7 relied upon. The law allows juries to rely on both
8 or either type of evidence in deciding the guilt or
9 innocence of an accused.

10 Direct evidence is where a witness testifies
11 to what he saw, heard or observed, what he knows of his
12 own knowledge, something which comes to him by virtue of
13 his senses.

14 In the case of circumstantial evidence, proof
15 is given of facts and circumstances from which one may
16 infer connected facts which reasonably follow in the
17 common experience of mankind.

18 Stated somewhat differently, circumstantial
19 evidence is that evidence which tends to prove a disputed
20 fact by proof of other facts which have a logical tendency
21 to lead the mind to a conclusion that those facts exist
22 which are sought to be established.

23 Circumstantial evidence, if believed, is of no
24 less value than direct evidence, for in either case you
25 must be convinced beyond a reasonable doubt of the guilt

1 of the defendant. One simple and often used example will
2 perhaps illustrate better than the description I have just
3 given what is meant by circumstantial evidence.
4

5 Assume that when you entered this courtroom this
6 afternoon the sun was shining brightly outside, there was
7 no rain, the sky was clear. Also assume that after you
8 entered this courtroom the venetian blinds were drawn
9 and heavy drapes were drawn over the windows so that
10 you could not look outside and could make no observation
11 from your seat in the jury box as to the weather conditions.
12 Assume, as you are sitting in the jury box, within a
13 short period of time, despite the fact it was clear and
14 dry when you entered somebody walked in with an umbrella
15 which was dripping water, followed in a short time by a
16 man wearing a raincoat which was also wet, and perhaps also
17 you heard a pitterpatter against the windows.

18 (Continued on next page)
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2 Now, you cannot look out to see if it is rain-
3 ing. And if you are asked is it raining, you cannot say
4 you know it directly of your own observation. But certainly
5 upon the combination of facts, even though when you
6 entered the building it was not raining outside, it would
7 be reasonable and logical for you to conclude that it is
8 now raining.

9 That is about all there is to circumstantial
10 evidence. You infer on the basis of reason and experience
11 from an established fact the ultimate fact to be proved.

12 We come now to one of your most important
13 functions, and that is determining just where the truth
14 lies. It is your exclusive function to decide which
15 testimony you will believe, and this is your function
16 as to each and every witness, whether called by the
17 government or by the defense.

18 You are not to be influenced by the number of
19 witnesses called by either side. You are concerned not
20 with quantity but with the quality of the evidence.

21 The first test you should apply in determining
22 the trustworthiness of a witness is to measure what he
23 or she says against your own plain everyday common sense.
24 You are not bound to believe unreasonable statements or
25 accept testimony that defies your common sense or insults

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2 your intelligence just because the statements are made
3 on the witness stand in a courtroom under oath. You saw
4 the witnesses in this case.

5 In deciding whether to believe a witness,
6 you should consider his conduct, his manner, his demeanor
7 on the stand and any relation each witness may bear to
8 either side in the case, the manner in which each witness
9 might be affected by the verdict.

10 Take each witness and ask yourself, how did
11 that witness impress you? Was he or she being frank with
12 you or was the witness being evasive? Did the witness'
13 version of the evidence appear to be straightforward?
14 Did the witness try to conceal some of the facts? Did
15 the witness have any motive to testify falsely? Is the
16 witness interested in the outcome of this case? How
17 strong or weak is his memory of important events? Does
18 he show any bias or prejudice? Was he hostile or friendly
19 to either side?

20 You are to consider the witness' opportunity
21 to know the facts about which he testified and the probability
22 or the improbability of what he said.

23 How does the witness' testimony add up when
24 considered with all the other evidence? How far does
25 the witness' story check out with the other evidence? Are

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2 thre any inconsistencies in the witness' testimony? If
3 so, how important are they? Has he made any inconsistent
4 statements on an earlier occasion and, if so, how important
5 are those inconsistencies?

6 In determining whether there are any incon-
7 sistencies with prior statements, you should consider not
8 only what was said but what was left out.

9 If you find that any witness has deliberately
10 and wilfully lied on the stand with respect to any
11 material fact, you may follow either one of two courses.

12 You may accept so much of the witness' testi-
13 mony as you believe or, if you wish, you may reject his
14 entire testimony.

15 In connection with the question of credibility,
16 we have heard testimony from a number of witnesses the
17 government claims were involved in or were accomplices
18 in the efforts to keep Richard Monell out of jail.

19 You must realize, I am sure, that in the
20 prosecution of a crime the government is frequently
21 called upon to use witnesses who are accomplices. Often
22 it has no choice. This is particularly so in cases where
23 a conspiracy may be involved.

24 Frequently it happens that only the members
25 of the conspiracy have evidence which is relevant to and

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2 is important in a case. There is no requirement that
3 the testimony of an accomplice be corroborated.

4 Proof beyond a reasonable doubt may rest on
5 the uncorroborated testimony of an accomplice, if
6 you believe it and find it to be credible, but an accomplice's
7 testimony must be weighed with caution and scrutinize
8 carefully by you.

9 The law permits, but does not require, the
10 defendant to testify in his own behalf.

11 In this case Mr. Doulin took the stand and
12 testified. Obviously a defendant has a deep personal
13 interest in the result of the prosecution. Indeed, it
14 is fair to say he has the greatest interest in the out-
15 come. Interest creates a motive for false testimony and
16 the defendant's interest in the result of his trial is
17 of a character possessed by no other witness.

18 In appraising his credibility, you may
19 take that fact into consideration. However, I want to say
20 this with equal force to you: It by no means follows
21 that simply because a person has a vital interest in the
22 end result that he is not capable of telling a truthful
23 and straightforward story. It is for you to decide to
24 what extent, if at all, the defendant's interest has
25 affected or colored his testimony.

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2 There has been testimony in this case of the
3 previous good character of the defendant. You should
4 consider evidence of good character together with all
5 the other facts and all the other evidence in determining the
6 guilt or innocence of the defendant. Evidence of good
7 character may in itself create a reasonable doubt where
8 without such evidence no reasonable doubt would exist.

9 But if from all the evidence you are satisfied
10 beyond a reasonable doubt that the defendant is guilty,
11 a showing that the defendant previously enjoyed a reputation
12 of good character does not justify or excuse the offense,
13 and you should not acquit the defendant merely because
14 you believe that he had been a person of good repute.

15 If the government failed to call a witness
16 who was equally available to both sides, you may not
17 draw an inference that his or her testimony would have
18 been unfavorable to the prosecution. There is no presumption
19 against the government based upon its failure to call
20 witnesses if it should appear to you that their testimony
21 would be merely cumulative or repetitive and of no greater
22 value than that of witnesses who have testified.

23 The law does not impose upon a defendant the
24 duty to call as witnesses any persons who are shown to
25 have been present at any of the events involved in the

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2 evidence or who may appear to have some knowledge of the
3 matters in question.

4 As I said earlier today, both sides have the
5 right to interview witnesses at any time before and during
6 the trial. Both sides have the right to subpoena or
7 request witnesses to appear in court. Of course, none
8 of this applies to Mr. Abraham Weissman who, the record
9 indicates, is deceased.

10 You are instructed that the question of
11 possible punishment of the defendant in the event of
12 conviction is of no concern to the jury and should not in
13 any sense enter into or influence your deliberations.
14 The duty of imposing sentence rests exclusively upon
15 the Court.

16 The function of the jury is to weigh the
17 evidence in the case and to determine the guilt or innocence
18 of the defendant solely upon the basis of such evidence.

19 Under your oath as jurors you cannot allow a
20 consideration of the punishment which may be inflicted
21 upon the defendant if he is convicted to influence your
22 verdict in any way.

23 The most important part of this case is the
24 part which you now as jurors are about to play because it
25 is for you and you alone to decide whether the defendant

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2 is guilty or not guilty of the crimes charged.

3 I know you will decide the issues that have
4 been presented to you according to the oath which
5 you have taken as jurors, in which you promised that you
6 would well and truly try the issues joined in this case
7 and a true verdict render.

8 And I suggest to you that if you follow that
9 oath and decide the issues without combining your think-
10 ing with any emotions, you will arrive at a just verdict.
11 It must be clear to you that once you get into an emotional
12 state and let prejudice, bias, fear or sympathy interfere
13 with your thinking, then you will not arrive at a true
14 and just verdict.

15 Remember, you are not partisans, you are judges,
16 judges of the facts. Your sole interest, your sole purpose
17 should be to ascertain the truth from the evidence in the
18 case. You are to be guided not by sympathy but solely
19 by the evidence in the case, and the crucial hardcore
20 question that you must ask yourselves as you sift through
21 the evidence is where does the truth lie?

22 This is a quest for the truth. It is not a
23 battle of witnesses, it is not a contest of salesmanship,
24 it is not a contest in personalities.

25 The only triumph in any case is whether or not

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2 the truth has prevailed. If it has, then justice has been
3 done. If not, justice will not have been done.

4 You are to determine the guilt or innocence
5 of William E. Doulin solely on the basis of the evidence
6 and subject to the law as I have charged you.

7 If you have a reasonable doubt as to the
8 defendant's guilt, you should not hesitate for any reason
9 to acquit. But, on the other hand, if you should find
10 that the government has met its responsibility of proving
11 the defendant's guilt beyond a reasonable doubt, you
12 should not hesitate because of sympathy or any other
13 reason to render a verdict of guilty.

14 When you begin your deliberations and you
15 gather around the table, you will find that there are
16 twelve people in the jury room. Your verdict must be
17 the unanimous verdict of all of you. You will vote
18 separately on each count, and to reach a verdict the
19 verdict must be unanimous on the count which you are
20 considering.

21 I will point out, however, that no one of you
22 should enter upon the deliberations in the jury room with
23 such pride of opinion that he or she would refuse to
24 change it if convinced by intelligent argument on the part
25 of another juror or jurors that they are right. However,

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2 you are not to do violence to your own well-founded
3 opinion and common sense. You take your good common
4 sense into the jury room.

5 I expect that when you come out of the jury
6 room, your good common sense and your good conscience
7 will accompany you.

8 Each of you is entitled to his or her own
9 opinion. In other words, each of you must decide the
10 case for himself or herself after thoroughly reviewing
11 the evidence and exchanging views with your fellow jurors.

12 I have concluded my charge.

13 At this time, Miss Kruger, I will hand you a
14 copy of the indictment and I will ask you to mark it as
15 the next Court's Exhibit.

16 (Court's Exhibit 14 marked)

17 THE COURT: I will see counsel at the side
18 bar. At this point I will inquire of Jurors 1 through
19 12: Are you all feeling well? Are you all ready,
20 willing and physically able to deliberate?

21 Very well.

22 I will see counsel at the side bar.

23 (At the side bar)

24 THE COURT: Are there any exceptions?

25 MR. SCHWARTZ: No, I have no exceptions at

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2 this time.

3 THE COURT: Mr. Platzman.

4 MR. PLATZMAN: Yes, I have just one, and that
5 is the one we had discussed in the robing room.

6 I take exception to that portion of your
7 Honor's charge in which your Honor instructed the jury
8 as to the four elements, one of which has already been
9 determined by your Honor as a matter of law, and the
10 reasons I indicated on the record previously with respect
11 to that aspect.

12 THE COURT: Your one exception is to my
13 instructions on materiality; is that correct?

14 MR. PLATZMAN: Yes, your Honor, that the
15 matter was a matter that should not have been referred
16 to the jury in my opinion. That's the only exception I
17 take. I don't take any exception to what your Honor
18 stated in connection with it, merely it should not have
19 been discussed.

20 THE COURT: It is your position that that
21 should not have been included within the charge?

22 MR. PLATZMAN: Yes.

23 THE COURT: Very well. You have your exception.
24 Are there any requests for supplemental
25 instructions?

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2 MR. SCHWARTZ: No, your Honor.

3 MR. PLATZMAN: No, your Honor.

4 THE COURT: You indicated, Mr. Schwartz,
5 that there was one other matter you wished to take up.

6 MR. SCHWARTZ: The only thing I thought we
7 should have on the record was the fact that we are not
8 submitting an underlined indictment to the jury. We had
9 during the course of pre-trial discovery furnished an
10 underlined indictment to defense counsel indicating those
11 portions the government claimed to be false testimony.
12 The government would have provided another clear but
13 underlined copy for the jury, the jury's deliberations.

14 However, as I understand it, Mr. Platzman
15 believes that he wants the entire indictment to go in
16 without underlinings. I just wanted that to be on the
17 record.

18 THE COURT: It was my understanding that the
19 government wished to send in a copy of the indictment with
20 underlining.

21 When I learned of that I directed the govern-
22 ment to inquire of Mr. Platzman whether or not he had
23 any objections.

24 I was advised that he did and, accordingly,
25 I indicated that I would send a copy of the indictment

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2 into the jury without any underlining.

3 So the record is clear, Mr. Platzman, did
4 the government convey that inquiry to you, and what was
5 your response?

6 MR. PLATZMAN: Just as counsel stated. The
7 government conveyed that inquiry to me and I said I did
8 not go along with the underlined copy.

9 THE COURT: You objected to an underlined
10 copy going in?

11 MR. PLATZMAN: Yes, your Honor.

12 THE COURT: I indicated previously that I
13 would accede to either the agreement of counsel or, if
14 you objected, I would send in an ununderlined copy into
15 the jury.

16 I now will show you, gentlemen, Court's Exhibit
17 14 for identification, which will be handed to the jury,
18 and which appears to have no underlining therein.

19 I have now reviewed Court's Exhibit 14 for
20 identification with counsel and I would note for the
21 record that it is a redacted indictment with Count 4,
22 which was dismissed by the Court earlier on motion, being
23 removed, and the counts which were originally 5, 6, 7
24 and 8 being renumbered 4, 5, 6 and 7.

25 Is that correct and is there anything that

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2 any counsel wishes to say before I hand this to the
3 foreman?

4 MR. PLATZMAN: No, it is correct. I have
5 nothing to say.

6 MR. SCHWARTZ: It is correct and the govern-
7 ment has nothing to add.

8 THE COURT: Thank you, gentlemen.

9 (In open court)

10 THE COURT: Miss Kruger, would you swear the
11 marshal to attend the jurors.

12 (A marshal was duly sworn)

13 THE COURT: Marshal, are there some pencils
14 and paper available?

15 THE MARSHAL: Yes, your Honor.

16 THE COURT: Very well.

17 Miss Kruger, would you hand Court's Exhibit
18 14 for identification, a clean copy of the indictment,
19 to the foreman.

20 (Handing)

21 THE COURT: The Court will now excuse the
22 jury, Jurors 1 through 12. I instruct you to proceed to
23 the jury room and commence your deliberations.

24 Let me make only one suggestion: All
25 deliberations should be conducted with all jurors present

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2 around the table. If at the outset or at some other
3 time some of the jurors wish to excuse themselves to use
4 the facilities, I would ask that you wait and conduct all
5 of your discussions in the presence of all of the jurors.

6 As I indicated, if you have any questions,
7 if you will send out a note, I will be here with counsel
8 and we will be available. We will try to respond to
9 your notes, your requests, just as promptly as possible.
10 Sometimes we are not able to respond immediately, but
11 we will do our best to be available to you and, as I say,
12 to respond promptly.

13 The jury is placed in charge of the marshal
14 and you are instructed to begin your deliberations.

15 (At 2:45 p.m. the jury retired to the
16 jury room to commence their deliberations)

17 (Three alternate jurors excused)

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2 (In open court; jury not present)

3 (At 3:55 p.m. a note was received from the jury.)

4 THE COURT: Gentlemen, I have received the first
5 note from the jury. It has been marked Court's Exhibit 15.

6 (Court's Exhibit No. 15 was marked.)

7 THE COURT: It says "Norman Shapiro's testimony.
8 Telephone memo."

9 I take this as a request that the testimony of
10 Mr. Shapiro be read, and also I take it as a request for
11 Government's Exhibit 2-F in evidence.

12 Is there anyone who takes exception to the
13 Court's reading of the request of the jury?

14 MR. SCHWARTZ: No, your Honor.

15 MR. PLATZMAN: I think your Honor's construction
16 of it is correct.

17 THE COURT: Very well.

18 One other thing. When we bring out the jury
19 to hear the Shapiro testimony, I will ask them, since it
20 runs some 100 pages, if they have reached a point in the
21 testimony where they have heard whatever they want to hear,
22 if they will raise their hand. Otherwise we will proceed
23 right to the end.

24 MR. PLATZMAN: You might inquire at this point
25 whether in addition to the direct they want the cross as well.

2 THE COURT: It doesn't mean I will cut it off
3 at the end of direct. I am not even talking about that.
4 What I am suggesting is they might reach a point in the
5 first few questions when they heard what they wanted, they
6 might continue three-quarters through the cross until they
7 heard what they wanted. They might pick it up in the first
8 part of the cross.

9 My suggestion would be that we have about 100
10 pages of testimony there. If you insist, I will have it
11 read from start to finish. I think the better way to do
12 it would be as indicated.

13 MR. PLATZMAN: The disadvantage would be that
14 the thing to be cut off would be cross. I think he should
15 just read the testimony.

16 THE COURT: All right. Bring out the jury.

17 (The jury enters the courtroom.)

18 THE COURT: Ladies and gentlemen, I have read your
19 first note which I have marked Court's Exhibit 15. The
20 note reads as follows:

21 "Norman Shapiro's testimony. Telephone memo."

22 The reporter will read the testimony of Mr.
23 Shapiro, and we have taken out from the exhibits Government's
24 Exhibit 2-F in evidence, which is the telephone memorandum.
25 At this point, I will hand the exhibit to the foreman, who

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will take it back to the jury room when you return.

You may proceed with the reading of Mr. Shapiro's
testimony, Mr. Reporter.

(Record read)

THE COURT: Just a moment. I notice that the
jurors have nodded their heads. I wonder if that is an
indication that you heard what you asked to hear?

Is there anyone who wishes to hear more?

In view of that, I will excuse the jurors and
direct that you resume your deliberations.

(At 5:10 p.m. the jury retired to further
deliberate.)

THE COURT: Gentlemen, I will recess court to
await further communications from the jury.

(Recess)

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2 (6:20 p.m. In open court - jury absent)

3 THE COURT: Gentlemen, I have had the
4 marshal advise the jury that they are going to dinner at
5 6:30 and I had him ask if there was anything they wanted
6 of the Court before they went to dinner. Their answer
7 was, "No."

8 Therefore, I am going to recess court and
9 excuse counsel. If they go at 6:30, I would suggest
10 that you return here at a quarter of eight.

11 The marshal advises me that the jury is going
12 to have dinner at Aldo's Restaurant. So I would ask that
13 no one here have dinner tonight at Aldo's.

14 Court is recessed. We will reconvene at a
15 quarter of eight.

16 (Recess)

17 (At 9:45 p.m. a note was received from the
18 jury)

19 (In open court - jury absent)

20 THE COURT: Good evening. I have received
21 a note from the jury which I ask be marked Court's
22 Exhibit 16.

23 (Court's Exhibit 16 marked)

24 THE COURT: The note reads as follows:

25 "Is the Court asking for one unanimous verdict

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2 per count?"

3 I suggest I send back a response yes. Read
4 the note if you will, gentlemen, and see if you interpret
5 it the way I do.

6 (Pause)

7 MR. SCHWARTZ: Your Honor, I am returning
8 Court's Exhibit 16 to the Court. I am not certain that
9 a simple yes would be sufficient. I am a little concerned
10 by the use of the word "one" in that note.

11 I thought perhaps telling the jury that
12 before they can reach a verdict on any one count, that
13 verdict must be unanimous rather than just a simple yes
14 response.

15 I think that is basically what your Honor
16 charged earlier today. Perhaps it should be repeated.
17 If they weren't sure when they heard it the first time,
18 a yes may not satisfy. Of course that's for each count.

19 MR. PLATZMAN: I would have no objection to
20 that sort of an explanation as long as it was limited
21 to just specifically that, that with respect to each count
22 there must be a separate unanimous verdict. Perhaps
23 couched in that language, your Honor.

24 MR. SCHWARTZ: I think the way Mr. Platzman
25 put it is fine, your Honor.

THE COURT: I had just written something,
"You should vote separately on each count. If you are
unanimous on any count, you will have reached a verdict
on that count."

If you would prefer your language, I would
take it, Mr. Platzman.

MR. PLATZMAN: I don't think it makes much
difference. Yours is a little bit longer. Would you
want to reread it?

THE COURT: Let me hear Mr. Platzman's
sentence. If it meets with both counsel's approval,
I am rather certain it will meet with the Court's approval.

(Record read)

THE COURT: Gentlemen, I have written out
the following note: "November 14, 1975, 9:50 p.m.
Members of the jury: With respect to each count there
must be a separate unanimous verdict. Judge Ward."

Is that satisfactory to you both?

MR. SCHWARTZ: That is satisfactory to the
government, your Honor.

MR. PLATZMAN: That is satisfactory, Judge.

THE COURT: Marshal, would you take the note
into the jury.

(At 10:45 p.m. a note was received from

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2 the jury)

3 (In open court - jury absent)

4 THE COURT: Gentlemen, I have a note from
5 the jury which we will mark as the next Court's exhibit.

6 (Court's Exhibit 17 marked)

7 THE COURT: The note reads as follows:
8 "We have reached a decision on Counts 1 and 3. No decision
9 on Counts 2, 4, 5, 6, 7."

10 I would propose at this stage, subject to
11 hearing from counsel, to take the jury verdict on those
12 two counts on which they have reached a verdict, Counts
13 1 and 3. I will hear from counsel if they feel otherwise.

14 I would think at this stage this note would
15 mean that the jury would want to go home to sleep, and
16 my own suggestion is whatever their verdict is on any
17 count before they leave, I would anticipate it be the
18 better course to take that verdict, but I will hear from
19 counsel.

20 (Pause)

21 MR. PLATZMAN: May it please the Court, since
22 they have already agreed, I guess your Honor's suggestion
23 is just as good. We might as well hear it.

24 MR. SCHWARTZ: Your Honor, we have no objection
25 to taking a partial verdict at this time.

THE COURT: All right.

MR. PLATZMAN: I think that maybe further instructions might be in order at this time. I don't know whether there might be some misunderstanding with the last note, that it almost seems you have to have a unanimous verdict. I say they have to try. If they reach a point where they cannot agree, they have to tell the Court that, too.

THE COURT: Obviously they have not agreed on five of the seven counts.

MR. PLATZMAN: They have to tell the Court when they reached a point where they cannot agree, that must be made known to the Court. After eight hours it is not an improper instruction or request.

MR. SCHWARTZ: I suggest it is too early to reach that point.

MR. PLATZMAN: If there is a misunderstanding, it might be pretty bad.

THE COURT: We do not know there is a misunderstanding.

MR. PLATZMAN: That last note may be that. That is what I am concerned about.

THE COURT: You both appear to indicate that we should take the partial verdict relative to the two

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counts on which the jury indicates they have reached a decision. If after that you would want me to give them further instructions, we have there two alternatives.

Number one, we could set the instructions now, not knowing what the jury has done on the two counts, or, number two, after we have taken that verdict we could excuse the jury and, in light of that verdict, determine what to tell them. I am a little reluctant to just go blindly and tell them something when I don't know what their feeling is.

MR. PLATZMAN: I'm willing to do that.

Let's listen to the verdict on Counts 1 and 3. I have a little bit of fear. After this combination of circumstances and in looking back at the last request, they asked, do we have to have a unanimous verdict on each count, per count. It seems almost to say -- the Court is instructing them -- of course you didn't. The way it was worded gives me the feeling --

THE COURT: No, I look back to the note, Court's Exhibit 16, and the response which we followed which I thought was an eminently correct one. My present thinking, looking at the note and the response, is that we should bring the jury out and ascertain the partial verdict and then take it from there.

2 MR. SCHWARTZ: After we ascertain the
3 partial verdict, I think we should send the jury back
4 to continue their deliberations and then decide what we
5 want to do at that point.

6 MR. PLATZMAN: Let me refer back to this
7 last note. It says "Is the Court asking for one unanimous
8 verdict?" This could mean -- you are asking them to
9 make a unanimous verdict for each count.

10 THE COURT: What the problem is, if you look
11 at their next note, Court's Exhibit 17, it is clear that
12 they knew they had to go count by count. They have
13 obviously reached a unanimous decision on two of the
14 counts and have not reached a decision on the others,
15 meaning that they are not unanimous on the others.

16 MR. PLATZMAN: That's right. The question
17 is, are you compelling them to be unanimous or can they
18 understand -- this is what I say is rather ambiguous in
19 this letter -- can they understand they should try to
20 agree? If they can't agree, they must let that be known
21 to you?

22 THE COURT: I think we will get to that when
23 we take their verdict.

24 What I will have Miss Kruger ask the jury
25 is: Mr. Foreman, has the jury reached a unanimous verdict

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2 on any of the seven counts.

3 MR. PLATZMAN: All right.

4 THE COURT: If the foreman says, yes, have
5 you reached a verdict on Count 1?

6 Since they have indicated they have reached
7 a decision on that count, the foreman will say, presumably,
8 yes.

9 What is your verdict?

10 Have you reached a verdict on Count 3?

11 He should presumably say, yes.

12 What is your verdict?

13 Have you reached a unanimous decision on any
14 of the other counts?

15 Answer, no, which is what I assume to be the
16 case.

17 Then I suggest we will deal with the problem
18 by excusing the jury and determining what to do.

19 MR. PLATZMAN: Whatever the verdict is on
20 1 and whatever the verdict is on 3, we may refrain or at
21 least I would prefer to refrain if it were a guilty verdict
22 on those counts of polling the jury at this point.

23 THE COURT: If you do not desire to poll the
24 jury at this time, that is satisfactory to me.

25 MR. PLATZMAN: I would like to reserve my

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2 rights of polling for later.

3 MR. SCHWARTZ: It seems to me if the jury
4 is going to be polled on a verdict, it should be polled
5 now.

6 THE COURT: I am beginning to think the
7 same thing. If either side requests that the jury be
8 polled now, either you do, Mr. Platzman, or the govern-
9 ment, whatever side does, I suggest that we do that.
10 We may very well be letting the jury go home tonight.
11 I want to be certain whatever their verdict is, whether
12 it be guilty or not guilty on these two counts, it is a
13 true and proper verdict which cannot be challenged as a
14 verdict.

15 MR. PLATZMAN: I would prefer to reserve my
16 right, if your Honor would grant it, until they get through
17 with everything.

18 THE COURT: If the government requests by
19 standing up, requests that the jury be polled, it will
20 then be polled no matter what the result.

21 MR. PLATZMAN: I wouldn't want to waive my
22 right.

23 THE COURT: That would make it academic.
24 We would then know if each juror's verdict is the verdict
25 as recorded.

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2 MR. SCHWARTZ: The government would be
3 making such a request.

4 MR. PLATZMAN: No matter what the verdict
5 is?

6 MR. SCHWARTZ: I think so.

7 THE COURT: If either of you does, I will
8 grant the request.

9 MR. PLATZMAN: All right. He he says he is
10 going to do it, obviously I have no choice. If he does
11 not do it, I would then like to reserve my right to poll
12 and perhaps, without stating it now, I would like to state
13 it on the record now.

14 THE COURT: You have just done so.

15 MR. PLATZMAN: All right. Thank you, sir.

16 THE COURT: Bring in the jury.

17 MR. SCHWARTZ: Your Honor, we may not ask to
18 poll the jury if it is not a guilty verdict.

19 THE COURT: I will give either counsel the
20 right to poll the jury if they so request.

21 (Jury present)

22 THE COURT: Miss Kruger, would you proceed,
23 please.

24 THE CLERK: Members of the jury, would you
25 please answer as your name is called.

1 gwjw 11

2 (Jury roll called - all present)

3 BY THE CLERK:

4 Q Mr. Foreman, has the jury reached a unanimous
5 verdict on any of the counts?

6 A Yes.

7 Q Mr. Foreman, has the jury agreed upon a
8 verdict on Count 1?

9 A Yes.

10 Q What is your verdict?

11 A Not guilty.

12 Q Mr. Foreman, has the jury agreed upon a
13 verdict on Count 3?

14 A Yes.

15 Q What is your verdict?

16 A Not guilty.

17 BY THE COURT:

18 Q Mr. Foreman, has the jury agreed upon a verdict
19 on Counts 2, 4, 5, 6 or 7?

20 A No.

21 Q Am I correct that the jury is still deliberating
22 on those counts?

23 A Yes.

24 Q Is it the desire of the jury to continue to
25 deliberate tonight or to go home and return tomorrow to

resume their deliberations? And if you want an opportunity to consider that matter and send a note out to me, you may. If you come out with instructions now, I will hear you.

A They would like to go home, your Honor.

Q And return tomorrow?

A Yes.

Q Very well.

A Could I say something else?

THE COURT: I suggest that if you do want to communicate further with me, which you may want to do, perhaps it would be best if you returned into the jury room and sent me out a note which represents the consensus view of all of the jurors. It would be my request that you go home. We have arranged for limousines which are waiting downstairs to take each of you to your respective home. So you will be actually taken to your homes, as I think you will recall I promised.

Since you will be getting home, some of you who live up a ways, about midnight, I was thinking that we would resume deliberations tomorrow at -- I was thinking something like 10:30 or 11:00 a.m., noting that you have to sleep and I know some of the commutation is not as good on Saturday as it is during the week.

1 gwjw 13

2 Why don't you return to the jury room and
3 if you wish to select a time within the ambit of those
4 times, send out a note indicating your request and I
5 will bring you out promptly. If you have any other
6 communication which you wish to address to the Court,
7 if you would put it in the form of a note, I shall be
8 awaiting your note.

9 Very well. Thank you, ladies and gentlemen.

10 (Jury absent)

11 THE COURT: Is there anything that anyone
12 wants to put on the record at this time?

13 MR. PLATZMAN: Merely what I had requested
14 before, your Honor. I think the jury -- it looks to me
15 they have been struggling with counts. I think that
16 may be what he was thinking of asking. They may be a
17 little bit confused, that they think that they must come
18 to a unanimous decision, must. This could be very confusing
19 to a jury.

20 THE COURT: By the verdict that was just
21 received, it is clear the jury knows that they reach a
22 unanimous decision, guilty or not guilty. They have just
23 found your client not guilty on two counts. It is obvious
24 to me that there is a disagreement among the jurors --
25 no one knows what it is -- relative to five remaining

counts.

MR. PLATZMAN: That is right. If they know that they have to try to agree on the five remaining counts and then if they agree unanimously to so state, but if they do not agree and there is no possibility of their agreeing, that should be made known.

THE COURT: I have a lot of faith in this jury's ability to communicate. They have certainly done so up to now, and I would suggest under the circumstances that we await their note.

MR. PLATZMAN: All right. I will do that. Thank you, sir.

MR. SCHWARTZ: The only thing I wanted to put on the record, your Honor, I would hope that the jury would stay as long as they can tonight to continue if they think it would be of any value.

THE COURT: I understand your desire in the matter. Let me see what the note says. I think that is the first order of business.

MR. PLATZMAN: I think the jury wants to go home. They are tired and I think this would now become undue pressure.

THE COURT: I am not about to say. I think the jury has been given a clear option to opt to go home

2 and has been given a second option relative to coming in
3 later in the morning which will account for the late hour
4 tonight.

5 I am not telling them to be here at 9:00
6 o'clock. I thought that what I had done to arrange for
7 their transportation home and to suggest that they
8 return at a mid or late-morning hour tomorrow makes a
9 lot of sense.

10 MR. PLATZMAN: Yes, I think so. When they
11 wanted to stay, they asked to stay. They didn't want to
12 go home.

13 THE COURT: I suggest to you that your fears
14 relative to the intelligence of this jury have been belied
15 by their performance so far.

16 (At 11:10 p.m. a note was received from
17 the jury)

18 (In open court - jury absent)

19 THE COURT: Gentlemen, I have received a
20 note from the jury which we will mark as the next Court
21 exhibit.

22 "We will return tomorrow"-- 11:00 a.m.
23 crossed out. Under it 10:30 a.m. -- "We are
24 confused with the wording of Count 2."

25 (Court's Exhibit 18 marked)

1 THE COURT: I suggest first that we bring
2
3 the jury out and send them home and, second, that I
4 indicate to them tomorrow when they reassemble that if they
5 have any specific questions relating to Count 2 or any
6 other matters in the case, we will attempt to answer them
7 tomorrow.

8 Is that satisfactory?

9 MR. PLATZMAN: Yes, your Honor.

10 MR. SCHWARTZ: Yes, it is, your Honor.

11 THE COURT: Would you bring in the jury,
12 marshal.

13 (Pause)

14 THE COURT: Needless to say, there are no
15 public statements by any of the attorneys or any of the
16 parties relating to the partial verdict. I think it
17 would be inappropriate to make any public statements so
18 far as the attorneys or the parties are concerned.

19 What has happened in the courtroom may of
20 course be reported in the press. I note the press is
21 here. But no statements should be made beyond what the
22 jury has reported here. They know what their decision has
23 been. So that's not news to them. But relative to any
24 other matters, any comment, any statement, there should
25 be none until the jury has finally reached a verdict.

(Jury present)

THE COURT: Ladies and gentlemen: I received your most recent note. I am going to excuse the jury. There are three limousines waiting downstairs. We have divided you into three groups roughly, according to the geographic location of your homes and you will be taken to your respective homes.

I direct that you return on your own tomorrow morning, reassemble in the jury room at 10:30 a.m., which was the hour which you stated was your preference in the note which was just sent out.

With reference to the second part of your note which read: We are confused with the wording of Count 2", if you have any specific questions as to Count 2 or any other matters, we will attempt to answer them tomorrow.

I suggest that you can think about the specifics of what you want to know, put it in the form of a note in the morning, and we will try to answer whatever questions you have relative to Count 2 or any other matters.

Ladies and gentlemen, I would not be surprised if your partial verdict is reported in the media. But since you know what your verdict is, that would not be any surprise to any of you.

Nevertheless, I am going to issue a caution tonight and direct that you follow it. I have said it before, but I am going to say it now with double emphasis:

The jury is in the process of its deliberations. I direct that you not discuss the matter further until you have reassembled here together tomorrow morning.

I direct that you not discuss this matter on your way home or on your way back tomorrow.

In the event your eyes should catch anything about this case in the newspapers, please, as soon as you see something, put them down. I suggest if you possibly can avoid looking at any newspapers, listening to any radio program or viewing any television program in the next twelve hours, that you do so. But in the event that you hear something, drop the paper, turn off the radio, turn off the TV or leave the room because I do want to keep your minds focused on what occurred in this courtroom and not what someone might say outside of the courtroom.

You have worked hard today. You have been here since 9:30 and it is going on 11:30. By my calculations that is fourteen hours.

I am sending you home now with the strong suggestion that you try to get a good night's sleep. You have worked hard today. You will be back tomorrow.

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I know you will want to finish the job as you started it as good conscientious jurors doing your duty as you see it and living up to the oath that you took when you were first impaneled.

The jury is excused, directed not to discuss this case with anyone or learn anything about this case from any source, and you are instructed to return to resume your deliberations tomorrow morning at 10:30 a.m.

Good night everyone.

(Jury absent)

THE COURT: Is there anything further, gentlemen?

MR. PLATZMAN: No, your Honor. I think whatever we do have, we do want to discuss; we might do so tomorrow morning.

MR. SCHWARTZ: Nothing further, your Honor.

(At 11:20 p.m. court adjourned to
November 15, 1975 at 10:30 a.m.)

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1 GwMch 1

2 UNITED STATES OF AMERICA

3 v.

75 Crim. 630

4 WILLIAM E. DOULIN

5 November 15, 1975
6 10:35 a.m.

7
8 (In open court; jury not present)

9 THE COURT: Gentlemen, it is now 10:35 a.m.

10 I have received the following note from the jury, which
11 I ask be marked the next Court's exhibit.

12 (Court's Exhibit No. 19 was marked for iden-
13 tification.)

14 THE COURT: "Where an individual count involves
15 two or more matters for consideration by us, does
16 determination of guilt or innocence on the count depend upon
17 a unanimous verdict on each matter in the count? In other
18 words if in Count X we reach a determination of guilty in
19 Matter A of that count and a determination of innocent in
20 Matter B of that same count, what should our verdict be with
21 respect to the entire Count X?"

22 I suggest that calls for bringing out the jury
23 and reading one brief portion of my charge which discusses
24 that matter.

25 Let me get the portion of the charge, show it to

1 Gwmch 2

2 you, Mr. Platzman, and then I'll hear from you.

3 Marshal, just, if you would, tell the jury we
4 received their note and are formulating a response.

5 (Discussion off the record)

6 THE COURT: Gentlemen, I propose to respond to
7 the jury's note, Court's Exhibit 19 for identification, as
8 follows:

9 I propose to bring out the jury and read my
10 portion of my charge, beginning at Page 1349, Lines 2
11 through 15, and then I plan to add the following statement:

12 "Now, ladies and gentlemen, applying the instruction
13 I have just given to you to your note in which you ask the
14 following question" -- and then I plan to read the question --
15 "the answer to that question is that if your unanimous
16 determination is Guilty in Matter A and innocent in Matter B
17 of the same count, your verdict would be guilty on that
18 count."

19 Is that satisfactory to the Government, Mr.
20 Schwartz?

21 MR. SCHWARTZ: Yes, it is, your Honor.

22 THE COURT: Mr. Platzman?

23 MR. PLATZMAN: No, your Honor.

24 In view of the fact that they stated that there
25 is confusion about Count 2, I would like the record to show

1 GWmch 3

2 that there was considerable argument among counsel and the
3 Court at some point indicating that all of us had a question
4 and a real dispute as to the last question and answer of
5 that count:

6 "Q For any purpose?

7 "A For anything."

8 And this, taken apart, might mean guilt on the
9 question as urged by counsel that Mr. Doulin was guilty
10 when he asked for an adjournment of a traffic hearing if it
11 is taken out of context, and I think in view of this
12 problem it is extremely essential that the jury be advised
13 that when they read a question and answer it must be read
14 in conjunction with the remaining question and answer
15 which surround it to get the full meaning, and, if a question
16 has been segmented, that they have got to read the entire
17 question, and I think some explanation along those lines,
18 if it please the Court, is extremely crucial at this point,
19 because I can see clearly that I could, too, reach the
20 conclusion that maybe he was stuck, that maybe this defendant
21 was guilty of asking for an adjournment of a traffic offense,
22 and that was my conclusion initially.

23 When I started to go back, however, and read
24 Count 2, I could see that the last question was a modification
25 of prior questions and can't be taken alone, and if the

1 GWmch 4

2 jury asks this question, that is exactly what they are doing,
3 and I think there is no harm in doing this unless the
4 Government is afraid the jury knows everything, what to do --

5 MR. SCHWARTZ: I didn't plan to respond but I
6 do want to say the Government is not afraid of letting the
7 jury have full and complete instructions, but I think we
8 don't want to confuse the jury. They have sent in a very
9 intelligent and carefully worded note, and I think we
10 should respond to it.

11 THE COURT: Gentlemen, last night we received
12 a short, somewhat cryptic note that the jury was confused
13 relative to Count 2. When we recessed for the night,
14 I asked that the jury formulate a more specific note so
15 that we might deal with the matter. We have now received
16 a note which I have read to you, some eight or nine lines
17 of what I think is a well thought-out question. I regard
18 the specific question as coming in response to the Court's
19 suggestion that the jury specify what they want.

20 I am going to bring the jury out and I am going
21 to instruct them as I have indicated, and at the end I will
22 state to them if there is anything further they require
23 we will be here waiting to respond.

24 MR. PLATZMAN: May I add to what I said?

25 THE COURT: Yes.

1 GWmch 5

2 MR. PLATZMAN: I think what your Honor said as
3 far as the instructions are concerned is correct. I think,
4 too, that the two questions, last night's question and the
5 one that came this morning, can't be separated. They have
6 to be read together.

7 In light of today's question in further explanation
8 of last night's question, I think that the jury should be
9 told what I have just suggested and that there is certainly
10 no harm in that in that it is the truth, it has never been
11 specifically stated by anyone in this court, and it appears
12 that the jury is examining item for item within the count,
13 and it may be -- and we should not risk the guilt or
14 innocence of this man -- that the jury may be doing just
15 what I did and just what everyone else was talking about,
16 just what counsel had urged, that it came within that last
17 portion of Count 2 when he said -- and I have objected to
18 that testimony -- that the defendant might be guilty because
19 of an attempt to obtain a traffic hearing adjournment, and
20 I think -- because counsel explained it at the time that
21 it came under the provision of "for any purpose," and I
22 said you had to read the whole thing together.

23 THE COURT: You have stated your objection. You
24 have your exception.

25 (The jury enters the courtroom.)

1 GWmch 6

2 THE COURT: Good morning, ladies and gentlemen.

3 I received word that you were here promptly,
4 and I appreciate that. I know some of you live a fair
5 distance from the courthouse and commutation is not as good
6 on Saturday as it is during the week, so that your efforts
7 in getting here on time are much appreciated by all con-
8 cerned.

9 I have read a note this morning which I have
10 determined was a more specific request than the last note
11 you sent out last night, and after showing the note to
12 counsel I have determined to respond by reading a portion
13 of my charge, then making an additional statement to you.
14 In the event that what I read from my charge and what
15 I state to you does not clear up the confusion which was
16 expressed by your note last night, as supplemented by your
17 note of this morning, I would ask that when you return to
18 the jury room you formulate a further note, or request in
19 the form of a note. If you will send that out, we will
20 attempt to respond promptly.

21 This is the response that I am giving you to your
22 note, the most recent note, the note of this morning, which
23 is Court's Exhibit 19 for identification.

24 The Government satisfies its burden of proving
25 the falsity of the testimony in a particular count if you find

1 GWmch 7

2 beyond a reasonable doubt that any part of the testimony
3 cited in that count is false and, if course, also if you
4 find that the defendant gave such testimony knowing at the
5 time that it was false.

6 The counts in the indictment, you will note,
7 contain answers given by the defendant citing more than one
8 fact. It is not necessary that the Government prove that
9 each of these facts or statements is false, but it is
10 sufficient if the Government proves beyond a reasonable
11 doubt that at least one factual statement as to each count
12 is false and, of course, that the defendant knew at the time
13 that that factual statement was false.

14 I have just read a portion of my charge and now
15 I would like to add to that these few remarks.

16 Now, ladies and gentlemen, applying the instruction
17 I have just given to you, to your note, in which you ask
18 the following question:

19 "Where an individual count involves two or more
20 matters for consideration by us, does determination of guilt
21 or innocence on the count depend upon a unanimous verdict
22 on each matter in the count? In other words -- if in Count X
23 we reach a determination of guilty in Matter A and a deter-
24 mination of innocent in Matter B of that same count, what
25 should our verdict be with respect to the entire Count X?"

1 GWmch 8

2 The answer to that question is that if your
3 unanimous determination is guilty in Matter A and not guilty
4 in Matter B of the same count, your verdict would be guilty
5 on that count.

6 Ladies and gentlemen, if you have any further
7 questions, I will be available, and if you send out a note
8 I will attempt to respond promptly.

9 The jury is excused. You are directed to return
10 to the jury room to continue your deliberations.

11 (At 10:58 a.m., the jury returned to further
12 deliberate.)

13 MR. SCHWARTZ: Nothing further, your Honor.

14 MR. PLATZMAN: I take exception to your Honor's
15 charge.

16 THE COURT: I would ask you to specify your
17 exception. I think it would be important for the record,
18 although I think you were doing that origianlly. The jury
19 arrived as you were concluding, and it may be that you did
20 not complete your remarks and would prefer to specify
21 further.

22 I tried to leave it that I took this as a response
23 to their note, that if I hadn't responded I would await
24 their further notes. I added that in light of your remarks.

25 MR. PLATZMAN: I had not quite finished. May we

1 GWMch 9

2 assume, then, that the statements I am making now which
3 supplement those made before were made as of the time
4 before the jury retired.

5 THE COURT: You had objected to the remarks which
6 I proposed to make and I made those remarks in substance.
7 So I think you have preserved your objection. But I would
8 permit you to put on the record anything else you wish to
9 state at this time.

10 MR. PLATZMAN: I was explaining the reason for my
11 objection to the manner in which the Court was to answer the
12 question, not that what the Court was doing and the statements
13 made were wrong, but what I said would be wrong is without
14 additional statements I had requested concerning further
15 instructions to the jury, and that the reason for those,
16 as I indicated in my talk which was interrupted by the presence
17 of the jury --

18 THE COURT: The arrival of the jury. I will state
19 for the record that no portion of your talk was in the
20 presence of the jury.

21 MR. PLATZMAN: That's right. They were still
22 outside, but we knew they were coming, and so I stopped at
23 the request of the Court.

24 THE COURT: Yes.

25 MR. PLATZMAN: What I wanted to complete was that

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I felt that Count 2, which apparently forms the basis of their question last night and also the question posed this morning as further clarification of that question is a confusing question, particularly in light of what the jury had asked, and that is that there are several things included in it and, without repeating, I think particularly the last section of it becomes very confusing unless you read it together with the questions put before it.

Very frequently a questioner will ask a question he gets a partial answer, and he expands his next question without necessarily repeating the prior question, but implicit in it is the existence of the prior question and the answer is to the entire question and not just to the last question, and that specifically took place with respect to the end of that Count 2, and I think since no one in this court, either judge or counsel, have ever discussed this question, that the jury in determining truth or falsity may read the questions and the answers in the light of the entire question and answer surrounding it in its total context, and may not engage in determining meaning out of context, and then I also submit that where a question is vague and possibly confusing, answered or not answered, the jury should have been instructed that this cannot be classified as perjury.

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2 If it was confusing to them, as it must have
3 been, otherwise they wouldn't have said so, and confusing
4 to or at least an issue of meaning between counsel, as it
5 was earlier in the trial, I urge that the jury should have
6 been instructed along those lines, and in the interests of
7 justice, at least have explained to them what I have
8 requested, because what I did request is not untrue, it
9 would constitute a better tool in the hand of the jury
10 in order to be able to determine meaning, and certainly it
11 could not have interfered with their mental processes,
12 and even if it were partially repetitious in light of what
13 happened, the jury doesn't always remember what the Court
14 tells them.

15 The best proof of that is that they asked
16 a question now which was answered previously by the Court
17 and they can't remember it. That's human nature. They
18 can't sit there and remember everything that we have learned
19 over years in law school and attach the same meaning within
20 the period of an hour on the basis of the Court's
21 instructions.

22 That's why a further instruction at this time in
23 light of the specific problem I urge was rather important,
24 and I take exception to the failure to clarify along
25 the lines that I have requested.

2 MR. SCHWARTZ: If I may briefly, your HONOR, I
3 think speaking about this jury and this jury's note, we
4 have seen they have been very careful, very precise and
5 very clear in what they wanted. When they realized that
6 the note last night did not assist us enough to respond to
7 it, they sent in a note today which was a very excellent
8 clarification of the problem they had, not only posing the
9 question but giving a precise example as to the difficulty
10 they were having and, in fact, I might say, an example which
11 in no way indicates which way they may be leaning, a neutral
12 and careful example, so that we could respond specifically
13 to their problem.

14 We have given them the specific instruction which
15 goes to their question, a specific response to their
16 question, and to at this time start adding new instructions
17 or repeating parts of the charge which they haven't asked
18 for, it seems to me would just delay and perhaps confuse
19 their deliberations when they seem to be going about it in
20 an orderly and sensible and excellent fashion.

21 MR. PLATZMAN: I would like to add a comment to what
22 counsel has said. Sure, it is clear insofar as they
23 remember the instructions, and clear as far as they under-
24 stood it, but obviously it wasn't that clear. Counsel and
25 myself still disagreed about the meaning of Count No. 2.

1 GWmch

2 How could this jury have interpreted it properly?

3 Counsel reminds me we answered their question
4 very briefly is a typical situation we hear in comedy teams
5 in vaudeville or radio, where one person tells someone
6 something -- asks a question, I should say, and the question
7 is answered very specifically, and then it turns out that
8 the house is burning down, some tragedy, and the individual
9 says, "Why didn't you tell me?", and the individual says,
10 "You didn't ask me."

11 We don't have to have anything specific when we
12 see there is a problem, and I think it was the obligation
13 of all of us in this court to see the jury had every tool
14 available, that they knew how to evaluate these questions
15 and answers. The obvious thing was to tell them they have to
16 read it in its total context, not out of the context.

17 THE COURT: I suggest that the note this morning
18 clarified the rather terse note which was presented at
19 about 10:30 last night, and it would appear to the Court
20 to have been the result of thought, and also to address
21 the particular problem that was bothering the jury.

22 I tried to respond to that note and also to indicate
23 to the jury that if I had not or if they wanted anything
24 further they should not hesitate to send out further notes
25 or requests in note form.

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2 I suggest that it would be error on my part to
3 intimate something. You have concluded that they wanted
4 certain things. I would suggest that was not clear from
5 the face of their two notes when those were taken together.

6 I suggest further that if they do want anything
7 else they seem quite able to respond.

8 I would also note that -- and I think I covered
9 this, but I want to cover it clearly -- that the first of
10 the two notes to which we are making reference was presented
11 to us at a very late hour last night, when I would suggest
12 the jurors, having been in session for almost fourteen
13 hours from the time they arrived at 9:30 in the morning,
14 were undoubtedly weary.

15 They had a night's rest, approximately twelve
16 hours away from the courthouse, and coming in this morning
17 it is obvious that they thought through their rather terse
18 and general request, they came up with a specific note,
19 we responded to that, and we have invited them to present
20 to us any further requests.

21 I think that is sufficient. You have made your
22 objection; you have your exception.

23 MR. SCHWARTZ: Thank you, your Honor.

24 (Recess)

25 (12:00 noon. In open court; jury not present)

1 THE COURT: Mr. Platzman, you indicated that you
2 wanted to make an application. You may proceed.

3 MR. PLATZMAN: Yes. As the jury retired, I had
4 forgotten there was one additional motion that I wanted
5 to make at this time in view of their finding of not guilty
6 on Counts 1 and 3. I considered it last night and intended
7 to bring it up this morning when we were interrupted by the
8 additional question.

9 At this time I should like to renew my motion, or
10 that portion of the motion as pertains to a request for a
11 dismissal of Count 2 on the ground that Counts 1 and 3
12 have been dismissed, or the defendant found not guilty,
13 and hence, by the nature of Count 2, it constitutes an overlap
14 with Counts 1 and 3. The finding of not guilty with respect
15 to 1 and 3 implicitly demands that we arrive at the
16 conclusion that he is not guilty of Count 2.

17 This is, of course, in addition to all the other
18 grounds I have as a matter of law made application.

19 THE COURT: In other words, you are now saying
20 that by virtue of the jury's verdict on Count 1 and also on
21 Count 3 it is necessary, as a matter of law, for the Court
22 to dismiss Count 2 or direct a verdict of acquittal?

23 MR. PLATZMAN: Yes, your Honor.

24 MR. SCHWARTZ: Your Honor, the Government would
25

oppose dismissing Count 2 and taking that count from the jury at this time. The jury should be left to deliberate on all the remaining counts.

There are factual differences between the counts and that has been determined by the Court at prior argument and motions to dismiss these counts, and I think the jury should continue to deliberate on all the counts in the indictment and it should not be taken from them at this time and they should not be further confused, if there is any confusion, concerning what the purpose of their deliberations is.

THE COURT: Count 2 appears to contain within it questions pertaining to offer of money and also the making of an approach to the district attorney or assistant or the judge. In that regard, the defendant has denied this under oath.

Count 3 doesn't cover the matter of approaches. Count 3, as to which there has been an acquittal, really covers an offer of money or anything of value. So Count 3 discusses an offer of money.

To the extent that Count 2 mentions an approach, there is a difference in proof and effect between Counts 2 and 3.

Count 1 discusses conversations, goes on to say,

"or discussion with anyone on the subject of you personally in any way receiving anything of value."

So Count 1 is very similar to Count 3. It talks about discussions regarding receiving things of value.

I see a distinction between Counts 1 and 3, as to which there has been an acquittal, and Count 2, in that Count 2 contains a series of three questions. Though it mentions at the outset offers of money, within the second answer, that is, the answer to the second question, there is a flat-out statement about approaching people, and that matter of approach does not appear to be tied in, the way the Court reads it, with the matter of whether or not money or things of value were offered or received, and since the jury could find that the matter of approach was a matter which was not testified to truthfully by the witness, and could convict on that alone, it would seem that the count is not redundant or repetitive of the allegations in Counts 3 and 1, as to which there has been a verdict of not guilty.

That's an initial reaction by the Court. I will now hear from Mr. Schwartz.

MR. SCHWARTZ: Your Honor, in addition to that, I think, looking at the first question in Count 2, the question contains two parts, one going to whether Mr. Doulin had approached anyone -- excuse me -- whether anyone had approached

him to ask him to exert some influence or had offered any money to him.

So I think the questions and answers in that count go to both approaches as well as the question of money being offered. Therefore, they are different.

THE COURT: There is a problem. Let's take it one step at a time.

I read the first question the way you do. Whether there was ever a time when anyone approached Mr. Doulin to ask him to exert some influence or offered him any money to try to exert his influence, in this case in connection with the gambling laws.

I know of no proof in the case where there was ever any offer to Mr. Doulin of any money to try to exert influence in connection with the gambling laws. I just don't recall any proof in that regard.

The first part of the question, query, whether anyone had approached him to ask him to exert influence, as to that of course you would point to the evidence indicating an approach made by Mrs. Grant or others on behalf of Richard Monell.

MR. PLATZMAN: As to the gambling laws?

THE COURT: I read his answer to the question as denying an offer of money and really not being responsive

2 to the question whether anyone approached him to ask him
3 to exert some influence. You notice he says, and I will read
4 his complete answer:

5 "Nobody offered me money. I know that years ago
6 many people who were not in gambling at all now asked me
7 to see the -- would I go see a judge or go see the district
8 attorney. But I never agreed to it. Never spoke to
9 any judge or district attorney in anybody's behalf. Now,
10 being in the undertaking business --" and that ends the
11 answer, and another question follows. So I don't put too
12 much stock in the Government's argument as it relates
13 to the first question and answer. I would hear you on
14 that.

15 That's why I focused on the second question and
16 answer in that count where he indicates that he never
17 approached anyone.

18 MR. SCHWARTZ: The reason I pointed to the first
19 question is I think it does demonstrate that that was part
20 of the overall questioning and that Mr. Doulin was aware
21 that that was part of what the questioner was referring to,
22 because when the last answer ends, which appears to be
23 interrupted because there are two dashes, the next question
24 is "That means gambling or anything else?", and then
25 Mr. Doulin goes on to broaden it, "Gambling or anything else,

as far as that goes."

And later in that same answer, the part that your Honor referred to, "But I have always set a rule, I don't see anybody, but I will tell them that I might, that I will see what I can do for them," and then later on in that same answer, "But I have never yet approached a D.A., an assistant or any judge for anyone."

"Q For any purpose?

"A For anything."

THE COURT: But go back to the initial question. The initial question is as follows:

"I guess what I had asked you was, and you started to answer, I asked you if there ever came a time when anyone had approached you to ask you to exert some influence, or had offered you any money to try to exert influence in connection with the gambling laws."

Now, I will add to that the next question which is:

"That means gambling or anything else."

But that doesn't change the thrust of the question, which is really, in the second part, whether anyone had approached the defendant to ask him to exert some influence. He never answers that. He just says, "I never approached anyone else."

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2 MR. PLATZMAN: He doesn't answer it. It is not
3 responsive.

4 MR. SCHWARTZ: What he does say in context,
5 your Honor, if he chose to broaden it, if he chose to give
6 an additional response or, in fact, ignore part of the
7 question and then give his own response, the point is the
8 Government's claim is that response in context was not
9 a truthful response. Even if he --

10 THE COURT: But it has to be a response to a
11 specific question. If you volunteer an answer which is
12 untrue, but it doesn't respond to any question that's
13 asked, are you giving false testimony, are you committing
14 perjury if you, not in response to any question, volunteer
15 some information which the Government then says is false?

16 Perhaps you are, I don't know, but I raise the
17 question.

18 MR. SCHWARTZ: I think that is going beyond
19 what we have here because I think that is going beyond what
20 we have here, because I think in context Mr. Doulin in
21 his first answer does say that many years ago people would
22 approach him and he never agreed to do it. He is explaining
23 that people approached him, that he never agreed to do it,
24 he never spoke to a judge. He is explaining.

25 THE COURT: That's in the context of gambling, you

see. Read it. It says in part -- I will read the whole answer.

Answer to the first question:

"Nobody offered me money. I know that years ago people who were not in gambling at all now asked me to see the -- would I go see a judge or go see the district attorney."

Now, if that refers to gambling, and I must suggest the end of the prior question says, "In connection with the gambling laws," and I think the answer at that point at least has to be read in context. It would seem to me that a serious question is raised here.

MR. PLATZMAN: May I add one more thing to this, Judge?

THE COURT: You may after he finishes.

MR. SCHWARTZ: Looking at it in an isolated fashion doesn't give the full picture.

The next question is, "That means gambling or anything else," and Mr. Doulin is telling the grand jury that the answer he just gave refers to anything, whether it is gambling or anything else, as far as that goes.

That's his own language. He is telling the grand jury --

THE COURT: If anyone had objected to the form of

that question at the trial, do you have any doubt that the objection would have been sustained? That's not a question, is it, even in the context of the prior question, "That means gambling or anything else?"

MR. SCHWARTZ: Your Honor, I think it is fair to say in the context of a grand jury proceeding that Mr. Doulin understood, or at least it is a jury question as to whether he understood exactly what the questioner was asking him and what he was answering. He volunteered information. He tried to explain the answer. He tried to tell the grand jury exactly the way he handled himself, even though people may have approached him, and he decided how to respond and what he thought was responsive.

Certainly, if anything, it is a jury question as to whether it is responsive, and I add, he had an opportunity here to explain whether he was confused by any question and he certainly never testified that there was any confusion in his mind.

The only -- I can't think of any question that he said he found confusing. The questions were read to him, the answers were read to him, and he said they were truthful or he believed them to be truthful at the time.

THE COURT: One of the problems is before the second grand jury in Count 5, second question:

2 "Has anyone come to you asking you to do a
3 favor for them in any other criminal case, that is, other
4 than traffic tickets?"

5 That to me will encompass the Monell situation
6 and to a certain extent I must suggest at the second grand
7 jury the Government questions were more clearly defined.
8 Obviously, a year or two of investigation had intervened
9 and more information had been furnished. So he was asked
10 that question and he is on trial for the answer.

11 MR. SCHWAPFZ: Your Honor, I think that even adds
12 to show how important his answers were in the first grand
13 jury.

14 THE COURT: I already held they were material.
15 All right, that's been done. Importance and materiality
16 can be equated here.

17 MR. PLATZMAN: May I at this time, if it please
18 the Court?

19 THE COURT: Yes.

20 MR. PLATZMAN: A number of things.

21 There is no question the form of this was really
22 bad and confusing. The fact that the defendant thinks he
23 knows what was meant is not the criterion. He answers
24 completely unresponsively, so the questions and answers
themselves may indicate he didn't know what was being asked,

or he was being evasive. I think in my original memorandum I said where there is an evasive answer to a question which is vague, essentially the vagueness would be brought about by improper form, but it is not perjury.

The expansion, as counsel indicates, to anything else, I don't know what the anything else means because there isn't anything else that would be within the jurisdiction. That first grand jury session concerned itself with gambling, and that is what was stated to the witness before he was asked a single question. There was no statement as to any other investigation that that grand jury was conducting. So the "anything else" becomes meaningless in view of the instructions as to what they were investigating.

They certainly couldn't investigate a state problem which could possibly be so, but they certainly didn't indicate there was anything within the jurisdiction of the federal court that they were investigating that didn't come within gambling, and his answer on the gambling question was a complete nothingness. He talked about something else; he didn't answer the question. And that in part was covered by both 1 and 3, because 1 refers to discussions. Obviously, discussions had to contain a subject matter.

THE COURT: I have just received a note from the

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jury which we will mark as the next Court's exhibit.

(Court's Exhibit No. 20 was marked for identification.)

THE COURT: "May we use circumstantial evidence? Please, a yes or no answer."

I propose to send back: "In answer to your question, you may use circumstantial evidence."

MR. PLATZMAN: I have no objection to that.

THE COURT: It is 12:25 p.m.

Gentlemen, I have composed the following note.

November 15, 1975, 12:25 p.m.

"Members of the jury, in answer to your question, you may use circumstantial evidence.

"Judge Ward."

MR. SCHWARTZ: That is agreeable to the Government, your Honor.

MR. PLATZMAN: Satisfactory.

THE COURT: Since it is satisfactory to both sides, Marshal, would you take the response in to the jury and hand it to the foreman.

THE MARSHAL: Yes, your Honor.

MR. PLATZMAN: I might add that in Count 3, as your Honor indicated, that, too, deals with an approach by the offer of monies. I see no distinction between those

counts. There is a definite overlap and the answers to the one thing that might be slightly different -- the question that might be different, the answers were not responsive and the form was very bad.

There is no real count I think that can stand in law at this stage of the proceedings.

THE COURT: The Court heretofore reserved decision on your motion for judgment of acquittal as it related to the various counts of the indictment, including Count 2. I will continue to reserve decision and we will await further word from the jury.

Thank you.

MR. SCHWARTZ: Thank you, your HONOR.

MR. PLATZMAN: I think this discussion we had concerning the renewal of my motion with respect to Count 2 only emphasize what was discussed previously, and that is that there is a great deal of segmentation and overlap and if the judges and the lawyers can't fully agree as to every meaning, how can we expect a jury to do so without at least giving them instructions that they have a right to read and look at both the questions and answers in the full context and in light of all the other questions and answers?

THE COURT: I do not know what the end result of

the jury's deliberations will be, but I suggest that their deliberations up to this time indicate that they have very carefully considered the various matters put before them, and relative to certain of them have rejected the Government's contentions. I frankly feel that the partial verdict which has been returned so far indicates a very perceptive and intelligent, hard-working jury.

MR. PLATZMAN: I don't disagree with that. I think that that is true. But they obviously came to a point where they were confused, and that's what they said.

THE COURT: When they were confused, they were asked to specify their confusion. They did so. We have responded. We indicated that we would await further notes. We have just received one.

This jury is neither reluctant to communicate their requests to the Court nor, in this Court's judgment, are they lacking in perception of their obligations as triers of the facts.

MR. PLATZMAN: All right, Judge. I will take exception.

MR. SCHWARTZ: Thank you, your Honor.

THE COURT: The Court declares a recess.

(Recess)

(12:45 p.m. In open court; jury not present)

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2 THE COURT: at the record reflect that about
3 three or four minutes ago Mr. Platzman called me in chambers
4 and indicated that he wished to put something on the record
5 and at this time I will hear you, sir.

6 MR. PLATZMAN: Thank you, sir. I must apologize
7 for having interrupted your Honor. We tried to get the
8 reporter and make sure everyone was here before we called
9 you.

10 Just a few minutes after the jury note was sent
11 back, I reconsidered the request that they had made, and
12 it appears to me that the request made by the jury indicates
13 that they either didn't hear, don't remember, don't recall
14 the details, but your Honor's instructions with respect to
15 circumstantial evidence were perfectly proper, and it only
16 pinpoints the fact juries can't remember everything.

17 I think that the request the jury made that your
18 Honor answered the question just yes or no, and which was
19 their desire, unfortunately really doesn't meet the legal
20 requirements that in using circumstantial evidence the
21 jury must be made aware of all the circumstances and all
22 the conditions and the methods of applying such circum-
23 stantial evidence in that there are inferences that only can
24 be drawn from circumstantial evidence, and they must
25 indicate guilt, and there should be full instructions with

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2 respect to all the inferences that may be drawn and the
3 kind of tests or standards that should be used in the use
4 of circumstantial evidence.

5 I think the single reply of a yes or no under
6 these circumstances might be unfair, and that the jury might
7 be ill equipped then just with a yes or no to apply the
8 use of circumstantial evidence in determining guilt or
9 innocence. And for that purpose, therefore, I would ask
10 your Honor to instruct the jury that while they may do so,
11 which was a direct answer, that they have to keep in mind
12 what you previously told them concerning its use and the
13 inferences that can or should be drawn from them.

14 MR. SCHWARTZ: Your Honor, the Government would
15 oppose any supplemental response to the question relating
16 to the use of circumstantial evidence. It seems clear that
17 the jury or the jurors knew the precise point that they had
18 a question about, and they wanted a simple and precise
19 answer to that question so they could continue with their
20 deliberations.

21 I think the answer tells them what the state of
22 the law is, and that is they may use circumstantial evidence.
23 That is what the Court charged, circumstantial evidence
24 is just as valuable or invaluable, depending upon the
25 jury's conclusion, as direct evidence, and the jury has the

2 answer to the precise question they asked, and I think
3 that's sufficient. And to now start giving them supplemental
4 responses sometime after the question came in and we
5 originally answered it is certainly unnecessary and would
6 just start to confuse them rather than add anything to their
7 deliberations.

8 MR. PLATZMAN: Just one more comment with respect
9 to what Mr. Schwartz said. The fact the jury asked for
10 a simple answer isn't the key as to whether they have to
11 have a simple answer. If the circumstances indicate that
12 the answer which they are seeking which they hope will be
13 simple is not a simple one but requires a more complex
14 answer, then I think we ought to give them the more complex
15 answer, which would result in a better capability of their
16 arriving at the truth.

17 THE COURT: The jury's question was: "May we
18 use circumstantial evidence?" It was not "What is circum-
19 stantial evidence?" It was not "Would you define
20 circumstantial evidence?" It was not "In what manner may
21 circumstantial evidence be used?"

22 It was "May we use circumstantial evidence?"

23 The Court must assume from this note that the
24 jury does not wish to have circumstantial evidence redefined.
25 If they did, they would have said so.

2 It would appear to the Court that the only
3 reasonable interpretation which can be put on this note:
4 "May we use circumstantial evidence? Please, a yes or no
5 answer," is that they want to know, possibly for the
6 satisfaction of one of their number who they are trying
7 to convince of something, and we don't know what's going
8 on in there, whether this can be done.

9 There may be eleven jurors who have said, "We
10 know it can be used"; there may be one in there who said,
11 "Well, I don't remember that," or "I don't recall that,"
12 and they have asked a question whether it can be used.

13 I have answered it and I suggest the answer is
14 the appropriate answer to be given to this particular
15 question.

16 Needless to say, should I receive a further note
17 from the jury where they inquire regarding circumstantial
18 evidence or any other matter, we will respond to that note
19 when it comes out.

20 MR. PLATZMAN: I have one additional comment to
21 your Honor's statement. Whether it is all twelve jurors
22 that may be lacking in understanding or only one, I still
23 urge that the argument that I gave should apply.

24 THE COURT: I don't think it makes any difference.
25 It could be that eleven jurors or twelve jurors or one

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2 juror -- I have no way of knowing nor do you how many
3 jurors want a response to that question. It's a "we," so
4 it refers to the jury as a whole. I don't think the number
5 of jurors who might be interested in the information is in
6 any way material or relevant to the response which we gave.
7 I think we have given a fair and reasonable construction
8 to the question which requested a yes or no answer, and it
9 was a question which permitted a yes or no answer, and
10 under the circumstances I am going to let the matter stand
11 as it is.

12 . PLATZMAN: I take exception to your Honor.

13 (Recess)

14 (3:10 p.m. In open court, jury not present)

15 THE COURT: Good afternoon, everyone.

16 I have just received the following note from the
17 jury:

18 "Your Honor, the jury has reached a verdict on
19 seven counts. John B. Kivlehan."

20 I ask that that be marked as the next Court
21 exhibit.

22 (Court's Exhibit No. 21 was marked for identifi-
23 cation.)

24 THE COURT: I ask the marshal to bring in the
25 jury, please.

2 (The jury enters the courtroom.)

3 THE COURT: Good afternoon, ladies and gentlemen.

4 Miss Kruger, would you proceed, please.

5 THE CLERK: Members of the jury, will you please
6 answer as your name is called.

7 (Jury roll called -- all present)

8 THE CLERK: Mr. Foreman, has the jury reached
9 a unanimous verdict on any of the remaining counts?

10 THE FOREMAN: Yes, we have.

11 THE COURT: We have previously taken the jury's
12 verdict as to Counts 1 and 3, so I will ask Miss Kruger
13 to proceed with Count 2.

14 Miss Kruger, you may proceed.

15 THE CLERK: Mr. Foreman, what is your verdict
16 with regard to Count 2?

17 THE FOREMAN: Guilty.

18 THE CLERK: Count 4?

19 THE FOREMAN: Not guilty.

20 THE CLERK: Count 5?

21 THE FOREMAN: Guilty.

22 THE CLERK: Count 6?

23 THE FOREMAN: Guilty.

24 THE CLERK: Count 7?

25 THE FOREMAN: Guilty.

2 THE CLERK: And so say you all.

3 Ladies and gentlemen of the jury, listen to your
4 verdict as it stands recorded.

5 You say you find the defendant William Doulin not
6 guilty on Count 1, guilty on Count 2, not guilty on Count 3,
7 not guilty on Count 4, guilty on Counts 5, 6 and 7, and so
8 say you all.

9 MR. PLATZMAN: May it please the Court, I should
10 like the jury polled.

11 THE COURT: Very well.

12 Ladies and gentlemen, we will now proceed to
13 inquire of each of you in turn whether your verdict as
14 reported by your foreman is your verdict, that is, not
15 guilty on Count 1, guilty on Count 2, not guilty on Count 3,
16 not guilty on Count 4, guilty on Count 5, guilty on Count 5,
17 guilty on Count 6, guilty on Count 7.

18 MR. PLATZMAN: My motion, if it please the Court,
19 is directed to the second, fourth, fifth, sixth and seventh
20 counts.

21 THE COURT: You prefer that? All right.

22 I will proceed further, second, second, fifth,
23 sixth and seventh counts; is that correct?

24 MR. SCHWARTZ: I would ask the jury be polled on
25 all the counts.

THE COURT: Then we will proceed in that way
and I will leave stand what I said.

THE CLERK: Mr. Kivlehan, is that your verdict
as his Honor just stated?

THE FOREMAN: Say it again, please.

THE CLERK: Is that your verdict --

THE COURT: I will proceed on all the counts,
that you find as follows:

The defendant not guilty on Count 1, guilty on
Count 2, not guilty on Count 3, not guilty on Count 4,
guilty on Count 5, guilty on Count 6 and guilty on
Count 7.

Is that your verdict?

THE FOREMAN: Yes, your Honor.

THE CLERK: Mrs. Rochon, is that your verdict?

JUROR NO. 2: Yes.

THE CLERK: Mr. Meizinger, is that your verdict?

JUROR NO. 3: It is.

THE CLERK: Mr. Hall?

JUROR NO. 4: Yes.

THE CLERK: Mrs. Haase?

JUROR NO. 5: Yes.

THE CLERK: Mr. Cordner?

JUROR NO. 6: Yes.

THE CLERK: Mr. Baxter?

JUROR NO. 7: Yes.

THE CLERK: Mrs. Laforte?

JUROR NO. 8: Yes.

THE CLERK: Mr. Encababean?

JUROR NO. 9: Yes.

THE CLERK: Mr. Donaldson?

JUROR NO. 10: Yes.

THE CLERK: Mrs. Truffini?

JUROR NO. 11: Yes.

THE CLERK: Mrs. Barber?

JUROR NO. 12: Yes.

THE CLERK: And so say you all.

Thank you.

THE COURT: Ladies and gentlemen, before I discharge you, I wish to thank you for your services. I never tell a jury whether I agree or disagree with their verdict, but I do comment on whether I found the jury to have served conscientiously, attentively and in accordance with their oath.

I had occasion to first meet you on Thursday of last week, approximately ten days ago, when you were empaneled along with the four alternate jurors, later three. I had occasion to observe you during the course of this

trial as you listened attentively to the various witnesses and to the presentation of the arguments and to my charge. I have also had an opportunity to observe you as you deliberated first yesterday with a partial verdict last night, and then today with a verdict on the remaining counts.

My observation is that this was one of those juries which perform in a manner which makes me proud to sit here. I think you will agree with me that jury service is not easy, particularly when you must sit in judgment on one of your fellow citizens, but it appears quite clear to me that you performed your duties in a most conscientious and devoted fashion.

I wish to thank you for your service on my own behalf and on behalf of the court in which I serve. As you return to your daily lives, you take with you the satisfaction of knowing that you have participated in the administration of the judicial system in this country, a judicial system which, in my judgment at least, has no better, no superior system anywhere in this world.

The jury is excused with the thanks of the Court.

MR. PLATZMAN: I assume the question of motions will be taken up.

THE COURT: Yes, indeed.

If there is nothing further for which you wish

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2 the jury I will excuse them.

3 THE CLERK: Your cards will be mailed to you
4 regarding your service as jurors.

5 (Jury excused)

6 THE COURT: At this time I will hear counsel as
7 to any motion he wishes to make.

8 MR. PLATZMAN: There are several.

9 First, pending further action, I would appreciate
10 it if your Honor continue bail and the liberty of the
11 defendant.

12 MR. SCHWARTZ: The Government has no objection
13 to continuing Mr. Doulin on his present bail status.

14 THE COURT: The defendant having moved, the
15 Government having indicated no objection, bail is continued.

16 MR. PLATZMAN: Thank you, sir.

17 There are some outstanding motions, and I have
18 additional motions to make. I don't know whether your
19 Honor wants to discuss the outstanding motions or whether
20 we might take them up together with the additional
21 motions, and I would ask your Honor's permission to enlarge
22 my time by an additional three weeks, I have been horribly
23 jammed because of this, beyond the time permitted by
24 statute.

25 THE COURT: In the normal course you would have

2 seven days from today. Is it for three weeks from today?

3 MR. PLATZMAN: An additional three weeks.

4 THE COURT: Four weeks altogether?

5 MR. PLATZMAN: Yes.

6 MR. SCHWARTZ: My only thought is perhaps if we
7 know when the sentencing date would be; then we would be
8 able to judge how much time before sentencing we would
9 have to respond to the motion.

10 THE COURT: I think, in the first instance a
11 presentence report would be appropriate, and it would be in
12 Mr. Doulin's best interest.

13 In view of the fact that he will be remaining
14 at liberty, in the ordinary course sentence would be imposed
15 in approximately six weeks, which would take us to --

16 MR. PLATZMAN: About January 1st.

17 THE COURT: I was thinking of the last week in
18 December. If you wish to make application to put the
19 sentencing over until after the 1st of January, I am prepared
20 to do so.

21 MR. PLATZMAN: Make it the last week in December
22 and then we will see then.

23 THE COURT: All right. Let me just check my own
24 calendar for that week.

25 I would suggest either Monday or Tuesday,

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2 December 22nd or 23rd, and I am flexible --

3 THE CLERK: The last week is the 29th, after
4 Christmas.

5 THE COURT: You were thinking of the 29th or
6 the 30th?

7 MR. PLATZMAN: Since this is included in the
8 holidays, maybe we might put it over until January,
9 if it is all right with your honor.

10 MR. SCHWARTZ: The Government has no objection.

11 THE COURT: I would suggest, then, that we put
12 the matter down for some day on the week of January 5th.

13 Does anyone have a preference as to the day or
14 the time?

15 MR. PLATZMAN: It is wide open at this point.

16 MR. SCHWARTZ: Any time that is convenient for
17 the Court.

18 THE COURT: It would seem that Mr. Doulin will be
19 traveling down here. I normally put sentences on at 9:30
20 in the morning or at 2:15 in the afternoon. Perhaps 2:15
21 would be more convenient for all concerned.

22 MR. PLATZMAN: I think so.

23 THE COURT: We will set sentencing for Tuesday,
24 January 6, 1976, at 2:15 p.m., I believe in Courtroom 2804.

25 Now that you know the date for sentence, is there

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2 a motion schedule that you would suggest, Mr. Schwartz?

3 MR. SCHWARTZ: Your Honor, if we could have ten
4 days before the date of sentencing, or ten days following
5 receipt of Mr. Platzman's papers, I think that would be
6 sufficient.

7 THE COURT: We can make it two weeks. The
8 reason I say that is you have two weeks in there, also.

9 MR. SCHWARTZ: You are right.

10 THE COURT: Let me work ahead. Mr. Platzman had
11 asked for four weeks, which would take you, Mr. Platzman,
12 to -- how is Monday, December 15th?

13 MR. PLATZMAN: That will be all right.

14 THE COURT: I think that is a reasonable time.
15 Motions by 12/15/75, and opposing papers by Monday, the 29th.

16 MR. SCHWARTZ: That's agreeable to the Government.

17 THE COURT: Mr. Platzman, I would suggest that if you have
18 any responsive papers, even though we do have a New Year
19 holiday in there, I should like to have them over the weekend
20 preceding sentence. So that if you wish to respond, I would
21 ask for those papers to be served and filed by Friday,
22 January 2nd.

23 Is that agreeable?

24 MR. PLATZMAN: All right. It is not a weekend.

25 It would be during that week.

THE COURT: We will get the Government's papers Monday, the 29th, and I would suggest you arrange for hand delivery.

MR. PLATZMAN: I wonder if it would be possible -- I would like a weekend in there, which gives me a better chance, to have it the 26th, which is Friday instead of Monday. That would still give you --

THE COURT: Let me move you to December 12th. If I move you to a Friday, I will move them back.

Is that agreeable?

MR. PLATZMAN: All right.

THE COURT: Your papers, then, by Friday, December 12th, if you want their papers before the weekend, and I said I would give them two weeks. We will make the Government's papers due on Friday, two weeks later than yours, December 26th. And, finally, I should like to have your reply papers in hand by Friday, January 2nd, which would give me the weekend at least to examine your papers. If you can get them in earlier, obviously I know you will, but there is a problem of holidays in there.

Is that motion schedule agreeable?

MR. SCHWARTZ: Yes, your Honor.

MR. PLATZMAN: Yes, sir.

May I, with the Court's permission, also address

myself to the motions, decisions on which have been reserved by your Honor during the trial?

THE COURT: It was my thought that, rather than attempt to deal with the matters piecemeal today, you might be in a better position to deal with the entire picture at one time in one omnibus form. I think it would be best. Attempting to argue and dispose of the motions today, I think would probably deprive you of certain additional arguments you may have between now and the time you get your papers together.

So my suggestion is that you may address yourself to any new motions, new matters, you wish to raise, and also as to any matters as to which I have heretofore reserved decision.

Is that agreeable?

MR. PLATZMAN: Yes, your Honor. Thank you.

THE COURT: Is that agreeable to the Government?

MR. SCHWARTZ: It is, your Honor.

THE COURT: Very well.

The last matter is, Mr. Doulin, you will be continued on bail. Your sentence is now set down for January 6, 1976 at 2:15 p.m. in Courtroom 2804. You are directed to appear at that date, time and place.

I must advise you that your failure to appear could

2 subject you to further and additional penalties. I would
3 not be releasing you if I were not quite certain you would
4 appear on the day and at the time and place you are supposed
5 to be.

6 Is there anything further?

7 MR. SCHWARTZ: Yes, your Honor. The Government
8 has one further application, that is, with respect to
9 Government's Exhibit 26 which had been offered in evidence,
10 the statement of Mr. Weissman. The Court ruled that it
11 was not admissible.

12 THE COURT: That is correct.

13 MR. SCHWARTZ: The Court had stated, I believe,
14 earlier that once the trial concluded, since that ruling
15 had been outside the presence of the jury, the Court would
16 then publicly rule on that application, on that evidence.

17 MR. PLATZMAN: This may still be a little premature.
18 There may be further proceedings in this, there may be other
19 hearings as to which perhaps testimony might be held, and
20 in view of the nature of this, these statements that were
21 made at a grand jury hearing, I don't know why suddenly
22 it is necessary to completely disclose grand jury proceedings
23 when the Government's position is always just the reverse.

24 THE COURT: They have indicated here, of course,
25 that they marked the transcripts as exhibits and sought to

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2 offer them. I would suggest that the cloak of secrecy
3 which usually covers grand jury proceedings has probably
4 been thrown aside by the Government.

5 However, if either of you believes that there is
6 still a question on that, I suppose we could withhold it.

7 So that there is no mystery, without going into
8 the substance of the matter, I would note for the record
9 that the material which the Government sought to offer
10 was grand jury testimony of the late Abraham Weissman,
11 which I will just merely state did in part conflict with
12 other grand jury testimony of Mr. Doulin. I will not go
13 further than that.

14 The Government sought to offer this testimony at
15 trial. The defendant objected. The Court sustained the
16 defendant's objection, ruling that this was, in the Court's
17 view, crucial evidence, and that the witness who had
18 appeared in the grand jury had not been confronted, as
19 required by the Sixth Amendment of the Constitution, and
20 had not been cross-examined.

21 Therefore, the Government offered to present this
22 evidence objected to by the defense. The Government's
23 offer was rejected. The motion to exclude the testimony
24 from the eyes and ears of the jury was sustained. The
25 evidence was never laid before this trial jury.

MR. SCHWARTZ: Thank you, your Honor. That is all the Government sought to have placed on the record.

THE COURT: Is there anything further?

MR. SCHWARTZ: No, your Honor.

MR. PLATZMAN: No, your Honor, not at this time.

THE COURT: I would like to make two statements for the record before we retire.

First, I should like to thank the press, particularly those reporters who were present in court several days ago when we had a hearing outside of the presence of the jury at which certain matters came up. I asked the press at that time to refrain from printing the subject of our open court deliberations because I believed that if they were printed and were read by any members of the jury that might cause prejudice in the trial. I received the oral assurances of the press in court that day that the matters to which I make reference would not be printed until after the trial had been concluded. The press lived up to those oral assurances, and I wish to thank them for it.

This was an example of cooperation between the Court and the press which, if followed in the future, will, in my judgment, assure that defendants receive a fair trial in courts. Once the jury has been discharged, anything

that happened in this courtroom is a matter of public record. But I do want to take this occasion to thank the press for its cooperation, which helped to assure what I believe to have been a fair trial. I thank you, gentlemen.

Finally, before we conclude, we have been very busy for the last ten days, and I would like to note for the record that the Government, represented by Mr. Schwartz and Mr. Jossen, and Mr. Doulin, represented by Mr. Platzman, both sides presented their respective positions in a very hotly contested case in a manner which comports with the highest tradition of the bar.

The court is adjourned.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

- against - :

75 Crim. 630

WILLIAM E. DOULIN, :

Defendant. :

-----x

B e f o r e :

HON. ROBERT J. WARD,

District Judge.

New York, N. Y.
January 23, 1976 - 3:20 p.m.

A p p e a r a n c e s :

THOMAS J. CAHILL, ESQ.,

United States Attorney for the
Southern District of New York;

By: BART M. SCHWARTZ, ESQ.,

ROBERT J. JOSSEN, ESQ.,

Assistant United States Attorneys.

MICHAEL M. PLATZMAN, ESQ.,

Attorney for defendant.

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MR. SCHWARTZ: Ready for the Government, your Honor.

MR. PLATZMAN: The defendant is ready, your Honor.

THE COURT: The Court notes that the defendant, William E. Doulin, and his counsel, Michael Platzman, are present.

There are motions which have been made on which the Court will hear argument.

I would ask Mr. Platzman if there is any reason why sentence should not be imposed at this time.

MR. PLATZMAN: If it please the Court, I would prefer to argue the motions, with your Honor's permission.

THE COURT: I intend that you should. I will hear argument of the motion and then defer the other matters until I have heard argument and have reached a determination.

You may proceed.

MR. PLATZMAN: It has been quite sometime since the motions themselves were made during the course of the trial, but I am quite certain your Honor is very familiar with them.

I think your Honor reserved decision on the basic motions which concerned themselves with an applica-

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for a judgment of acquittal on the counts that he was not acquitted on by the jury.

We have in the interim, with your Honor's permission, submitted memoranda of law which your Honor, I am certain, has had an opportunity to review. I am therefore not going to go through these motions in great detail.

It was my intention that the written portion of the motions supplement what had appeared upon the trial. I would like at this time merely to cover just a few of the areas that I think I would like to review with your Honor, particularly from the point of view that your Honor may have of some views concerning my position which may or may not be agreed with, and I may thus have an opportunity at least of exploring them with your Honor. That's my principal purpose in accepting your Honor's invitation to argue these motions.

I will not review some of the things that were contained in the motion papers and our requests for continuance. I think they have been gone over at great length during the trial itself.

I do ask that your Honor reconsider the problems that did arise in the combination of all of the events. Without repeating everything, they were referred to at great length during the trial, and perhaps sometimes we

are all much better in hindsight than we are in foresight. I am asking your Honor merely to reconsider that thought as to whether or not in the combination of all the factors that I had mentioned during the trial there was not some deterioration of the kind of representation that perhaps this man was entitled to.

We also have in our motion, which need not be discussed today, either an application for a new trial on the ground of newly discovered evidence -- and I am certain your Honor has had the opportunity to review that -- some of it is based upon an affidavit of the witness who stated that she was under the impression that certain events took place, and counsel for the Government has opposed this with an affidavit, and I, of course, submitted no reply affidavit to that, naturally accepting whatever the Government stated in that regard as the factual situation.

Thus, I would like --

THE COURT: Let's get that matter out of the way.

The Government had indicated that there was no tape recording used of the conversation between the two investigators and Mrs. Grant.

The Government further indicated that if the matter was questioned further they would supply the affidavit, if I recall, of the FBI agent who was concerned.

I assume from what you have just said that you are prepared to take the representation made by the United States Attorney in his opposing papers that there was, in fact, no tape recording made of the conversation with Mrs. Grant to which both sides made mention.

MR. PLATZMAN: That is submitted by counsel for the Government. I certainly accept that. I don't go beyond that at all.

I should like to get, essentially, then, to a few of the major points that we have tried to raise in our memorandum and upon this application for acquittal and to quash testimony before the Grand Jury, and other relief that we seek in the application itself.

I would like to make one or two very brief comments concerning the approach that appeared to be within the position of the Government in its memorandum and as the whole tenor seemed to have been, that there was a deep-rooted conspiracy in which this defendant was involved to interfere in the processes of justice.

There was constant repetition about fixing cases, about altering determinations. Aside from the fact that he was attacked also in the memorandum concerning the fact that the Weissman confession was excluded and drawing conclusions from that confession by its non-admission which

1 doesn't exist in the confession itself, there was nothing
2 which would support the conclusion that there was a promise
3 to do anything or that money was passed, or anything of
4 the sort, and the representation in the brief, the general
5 atmosphere that appeared surrounding this memorandum that
6 had been submitted in opposition to the motion, that Mr.
7 Doulin was involved in pay offs and protection, et cetera,
8 none of this is really supported either by the record,
9 either direct evidence or hearsay evidence, and on the
10 contrary it was rejected by the jury.
11

12 The counts upon which he was acquitted concerned
13 themselves with receipt of money.

14 So it really boils down to these counts upon
15 which he was convicted as to whether or not he ever spoke
16 to anyone in attempting to obtain leniency for Monell,
17 and this is really what this case boils down to with respect
18 to the remaining counts because there is no other proof,
19 direct or otherwise, on any other subject that would support
20 the counts as alleged, and we submit before I go into the
21 legal questions that the easiest thing in the world for a
22 prosecutor at the time that Mr. Doulin was being examined
23 before the Grand Jury was to have asked him that, yet
24 nowhere in any of the interrogations does it appear that
25 the prosecutor asked him: Did you ever ask anybody to get

1 leniency? Did you ever do anything in connection with the
2 sentence of Mr. Monell?
3

4 Those were not asked. Instead, we have questions
5 which I will get to as to whether or not there were multiple
6 meetings with respect to these questions and within the
7 view of the Bronston case I have referred to in my brief;
8 instead generalized questions were asked carrying the
9 impression of the transfer of money, of interference, of
10 corrupt acts. It was the denial which constituted a viola-
11 tion of the law that any conversations in fact took place,
12 yet even those requests were vague and general, and under
13 the decisions we say that those questions are questions
14 which cannot and should not form the basis of a perjury
15 conviction.

16 THE COURT: Stop there for a moment.

17 The Court has read in the normal course and
18 the Government apprised you by letter of the decision of
19 the United States Court of Appeals for the Second Circuit
20 in United States of America v. Joseph Bonacorsa, which was
21 decided on January 9, 1976. This discusses at considerable
22 length the matters which are germane to this proceeding
23 relative to ambiguity of questions and the like. I think
24 if you are going to succeed in connection with your motion,
25 which is premised on the questions themselves, you must

distinguish this case, that is Mr. Doulin's case, from Bonacorsa, because I read Bonacorsa as the law of the Circuit as it exists today, the law which I must follow in connection with my determination of your motion.

MR. PLATZMAN: Yes, your Honor. I am appreciative that counsel for the Government has sent a copy of that letter that he sent to your Honor and a copy of the opinion, which made it rather convenient for me to read it as well, and I thank him for it.

We urge strongly that the Bonacorsa case does nothing to the decisions in Bronston, Esposito, Cobert, Wall and Lattimore, and all the others that go to the question of ambiguity. It supports just the position that I took during the course of the trial, and that is that questions cannot be taken out of context. That's what was done in this case and they tried to do it in the Bonacorsa case. He was trying to take words out of context, not their total meaning. If we read the questions and answers in the Bonacorsa case, I am sorry that we didn't have that kind of question put to the witness in this case. Then we would not probably have had these problems. The questions were very precise. He was asked specifically given questions about a specific conversation, the name of an individual, the date of the conversation, whether he was the

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owner of the specific horses in question; in other words, every single question, and these were set forth by the Court in its opinion as footnotes, and reading these one cannot but help conclude that there was no doubt as to what the meaning was of those questions and answers.

All that the Court there said, which I strongly support, is that you cannot take one question out of the context of all of those that are being read and then try to put another meaning in it. That's what we say was being done with respect to the last question and answer in Count 2 in this case when the question was asked: For what purpose? He said: For anything.

I say taking that out of context is just the reverse process. He was being charged about a traffic hearing adjournment which was taken under that question which could not have had anything to do with it. If you read the questions and answers that precede this, they concern themselves with questions and answers about pay offs, gambling, and the receiving of money. Isolating that question and answer would have been taking it out of context. We support the Bonacorsa case. I want to rely upon that case to read when we do read these counts 2, 5, 6, and 7. We want to get the whole picture of those counts and not isolated questions and answers.

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2 We urge that when we get a review of these
3 questions, our attack against them on the basis of what
4 appears to be their ambiguity, that the whole drive of the
5 prosecutor, the whole purpose, was to ask him something that
6 he was doing illegally. I grant you that perhaps if the
7 jury had come in with a verdict which indicated his guilt
8 with respect to the money matter, the situation might have
9 been entirely different; but if we recognize that he didn't
10 get any money, we must accept this because this is what the
11 jury did, then the balance of what he is being accused of
12 isn't a fair implication, according to Bonacorsa, of the
13 total picture. He was not being asked about something that
14 was legitimate. They were asking him whether he did some-
15 thing illegitimate. Certainly he said no, and speaking to
16 a Judge or a District Attorney or probation officer is not
17 illegal. It is nothing that carries with anything that is
18 wrong or any connotation of illegality.

19 I was coming to this Bonacorsa case and we felt
20 very strongly about it. I was pleased when I read the
21 case. This is exactly what we are saying; it supports our
22 position, our attack of Count 2.

23 The United States Supreme Court in Bronston and
24 in Esposito, Herbert, Wall and Lattimore, they all hold
25 that a questioner must be precise.

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2 This was referred to by the Bronston case in
3 the United States Supreme Court when the United States
4 Supreme Court said that it is the duty of a prosecutor
5 to pin the witness down to specific things so that the
6 questions are very specific and are framed properly so that
7 the witness must answer only in a certain fashion. This
8 was not done.

9 The Court will well recall that counsel for the
10 Government, counsel for the defendant, and the Court,
11 engaged in six pages of discussion, six or eight pages of
12 discussion, trying to interpret what the questions were in
13 Count 2, and counsel admits that perhaps they were not best
14 framed but that's the whole question here, that they were
15 not best framed. They should be best framed.

16 Your Honor, I think, at one point stated, "You
17 must admit, counsel, that if you had asked this question
18 during the trial it was bad in form" -- but what is bad
19 in form? The "bad in form" is that the witness is not
20 being pinpointed to a specific target as to how he is to
21 answer, and we say that in the Bronston case where it
22 turned on the questions as to whether the witness was un-
23 responsive, an unresponsive answer can't be perjury either,
24 or had multiple meanings.

25 And in the Esposito case it was vague, broad,

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2 and generalized kind of questions; we had some evidence of
3 that here.

4 On Cobert it was also a non-responsive situation.

5 Lattimore was typically that, involving also the
6 general and multiple conclusions, interpretations, that
7 could be placed upon these questions.

8 We say that under the general concept of these
9 cases and Bonacorsa, you have to read those questions and
10 answers in its entire context.

11 What do these questions and answers consist of
12 in Count 2? If I may very briefly review them, he was
13 asked whether there came a time when anybody approached him
14 to ask -- here we get to the vague areas -- to exert some
15 influence or had offered him any money to try to exert
16 influence. You must remember the jury acquitted him about
17 any money.

18 In connection with the gambling laws -- I don't
19 know what that means: to exert influence in connection with
20 the gambling laws. I don't know what that means. I don't
21 know. It is vague; it is general. It comes within the
22 definition of the Esposito case and, certainly, the general
23 tenor of this is he was asking this man, "Did you ever do
24 anything to fix anybody?" If this is the only construction
25 you could put on it in connection with the gambling laws:

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2 Were you protecting somebody with pay offs who was violating
3 the gambling laws and preventing somebody from being
4 prosecuted under the gambling laws? Who is he doing this
5 to? Did he see a Judge to throw the case out or a District
6 Attorney not to prosecute? I don't know. It is not being
7 asked, yet he could have asked those specific questions and
8 his answers, we say the answer "No" would have been a com-
9 pletely truthful answer and an honest answer. It so
10 happens that in this instance he didn't even answer the
11 question. He said: Nobody offered me any money; he was
12 unresponsive.

13 THE COURT: There are two problems with your
14 argument, if I may say so. One is that Mr. Doulin chose
15 to put in a defense. Mr. Doulin chose to take the stand.
16 At no time do I ever recall him saying the questions were
17 ambiguous and, "I didn't understand them." He was asked
18 the questions by you. I remember it. He stated, in
19 essence, that the answers to the questions which he was
20 asked, each and every one of them, was true.

21 The other point I would make to you at this time
22 is that I have concluded from a reading of the Bonacorsa
23 opinion, particularly Page 1456 of the slip opinion, was
24 that in any event it was for the jury to decide whether in
25 that case it says the Appellate gave or could have given

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2 any other meaning to the question.

3 I suggest that the jury has spoken. I think
4 those are two problems that you face that were brought to
5 focus in my mind, at least, when I read the Bonacorsa
6 opinion.

7 If you wish to address yourself to the two points
8 you may do so.

9 I want you to know what my thinking is so that
10 if you can change it I certainly would give you that
11 opportunity.

12 MR. PLATZMAN: As a matter of fact, I am very
13 appreciative of this. I feel this is my major purpose in
14 accepting the invitation to argue this. I am appreciative
15 your Honor has expressed your thoughts, and I would like
16 to address myself to those two thoughts.

17 No. 1, whether the witness believes he is con-
18 fused or not has nothing to do with it. If the question is
19 whether the question itself is proper and can generate
20 multiple interpretations, and in none of these cases does
21 it have to appear that the witness was confused. Sure,
22 in every one of these a jury convicted this man, these
23 defendants, and then they went up on appeal and were reversed
24 and dismissed. It is for this very obvious reason: I,
25 as a witness, sitting in a witness chair, can believe I

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2 answered the question correctly because I have that one
3 interpretation. In this case I could seen ten different
4 interpretations, and I may answer it yes or answer something
5 else no, but that may not be what the prosecutor has in
6 mind, and I think at one point in his brief Mr. Jossen
7 does say something about, "Well, his answers have to be
8 to respond to what the prosecutor is looking for." How do
9 we know what he is looking for if the question itself is
10 ambiguous? Actually, I should not say, "ambiguous." I
11 don't think that that is the right word. I think that the
12 description would be, possible of multiple construction.
13 Here there cannot be any doubt that there are so many pos-
14 sible constructions that could be placed. It would be the
15 easiest thing in the world to ask these questions very
16 specifically, and that doesn't appear anywhere.

17 The rest of that count is similarly false in that
18 line, and I think particularly -- and I raised this ques-
19 tion during the trial -- that last question and answer.
20 Your Honor may remember that, and the answer was: For
21 anything.

22 I say you cannot take that alone. That's what
23 Bonacorsa says. You have to take it with the questions and
24 answers that preceded it. If you do that, the whole thing
25 concerns itself with being asked questions about whether

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he did something to influence somebody to interfere, which was the influence and the interference, the interceding which was used interchangeably throughout the case, the counts, as well as the questioning and the briefs, and the whole connotation of this: Did he do something to interfere with justice which would have been wrong? And his answer to it, from his own point of view, could be perfectly no, because speaking to somebody about leniency on a sentence is not interfering in justice. There is no interference literally.

The remaining questions, 5, 6, and 7, fall in a similar category.

I grant you, I think the situation today is altogether different than when I attacked these questions during the course of this trial. The position of the Government at the time was certainly a little bit stronger because if the jury convicted him of any count which involved the taking of money, then the question as to whether he influenced or interceded might have greater significance because that would have the connotation of corruptness. Certainly this witness had the right to assume that when he was sitting before that Grand Jury he was not being brought down to find out whether he polished his shoes well; he was being brought down to see whether something

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wrong was taking place, and he was told he was a target defendant of a possible crime.

So we say that in the fair reading of this within the context of Bonacorsa, the whole thing should be read together. The fact that he thinks he understood it is not the question. The question is the legal construction that your Honor will put on it, whether it is possible of multiple interpretations, as the United States Supreme Court has said in the several cases I referred to.

I would like, briefly, to touch these other counts, because I don't want to spend that much time on just the single count, and that is Count 5. He was asked whether he personally, indirectly, or someone else, interceded in the criminal justice system.

Assuming probably he is in the Federal Court, it would be in the Federal criminal justice system, which would be a literal interpretation of it according to the Bronston case, which is the basis for throwing it out, an attempt to influence the outcome of the case. He didn't influence the outcome of the case. We accept everything that took place. They pleaded guilty. The case was over when he, according to the Government, suggested a lenient sentence; yet nowhere in Count 5 -- and this was done after Monell had already appeared before the Grand Jury -- nobody

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2 ever asked him: Did you ever go to anybody and ask for a
3 lenient sentence?

4 I think that's the easiest question to have asked
5 this witness. But reading 5, and we take a look at 6 and
6 7, they fall into that same category. We have generali-
7 zations, beating around the bush. Did he intercede? There
8 is no proof in this case that he interceded or that he
9 interfered. This is common knowledge: The Judge who
10 presided at this trial was interviewed and came down to the
11 United States Attorney's office. He was never brought to
12 Court and said that this influenced him, affected him,
13 changed his mind, or altered his decision. That never took
14 place.

15 THE COURT: You have gone outside of the record
16 that was before me. I know there were some matters which
17 both sides presented to me in the post-trial motions, and
18 I wondered a little bit about including certain newspaper
19 articles and other things. I think I must determine this
20 matter in the context of the record as it existed at the
21 conclusion of the trial.

22 MR. PLATZMAN: I agree.

23 What I am trying to say with respect to this
24 Count 5 is that we read it in its whole context, according
25 to Bonacorsa. You can only get the impression that he is

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being asked as to whether or not he interceded, he interfered -- and it says -- to influence a trial, the criminal justice system, to affect the outcome of the criminal justice system. This is not what took place in this situation with respect to Monell. There was no trial.

There was certainly, if we confine this to to the State criminal justice system -- there is a question as to whether there is jurisdiction. We will get to the question of jurisdiction in another point that I would like to make.

The point is that Count 5 also was capable of being construed in several different ways, and particularly we strongly urge that the way it might be construed, preferably, is one as to whether this man did something wrong, he interfered with a case that was pending, the outcome of that case.

That never took place and there is no proof of that. If the jury had accepted the money passing, perhaps there would be something to hang their hats on, but it did not take place in this case because of the acquittal by the jury and the rejection of the concept of the passing of money.

Count 6 then concerns: Did you ever have a discussion with Mrs. Grant and agree to intercede in a

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2 criminal case that was pending? There was no criminal
3 case pending. The man had pleaded guilty. The case was
4 over and he didn't intercede in that case. He could do
5 what everyone else had a right to do, and still the impli-
6 cation under every one of these cases is the doing of
7 something wrong. It continues on: Did he ever have a
8 conversation with Mrs. Grant or any other member of the
9 family?

10 I don't know what proof there is directly con-
11 cerning the conversations with Mrs. Grant. One might
12 draw some inference of that sort, but it still must relate
13 back to the first question which involves the doing of
14 something wrong, interceding to influence the determination.

15 The same thing is true with Count 7, which is
16 really almost repetitious of the last question of Count 6.

17 I think I have made a point on this, and I don't
18 want to dwell any further on this question. We feel strongly
19 about this. Whether this man believed he was confused or
20 not has nothing really to do with the legal question that
21 we are raising. If the Court should, as the Court did in
22 the cases I have referred to, come to the conclusion there
23 are multiple interpretations which could be placed on
24 these questions, and if, in addition, it is accepted that
25 the only real, real, interpretation in the context as set

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2 forth in the Bonacorsa case, that this was a man being
3 asked questions, not the specific words taken out of context
4 but being asked questions which relate to his doing some-
5 thing wrong or participating in a wrong act, then I say
6 if that is true his answers denying it justify acquittal
7 on these points.

8 I would like to get to one or two other points.
9 I think counsel, himself -- I have a note here -- said
10 in his brief, admitted in his brief, the questions could
11 have been better phrased. I think the admitted answers
12 could have been better phrased.

13 In the context of Bonacorsa he didn't admit
14 that he did anything wrong in contacting anybody, and he
15 didn't. There was no proof of that, even in the unadmitted
16 confession does it appear that he did anything wrong.

17 We do have one other point on which I will be
18 very brief because this was just touched on very lightly
19 during the trial, and that was on the question of
20 materiality of the questions only from this point of view,
21 that is, as to the claim that we made that at the time that
22 the witness who was the target defendant was being ques-
23 tioned the Government already knew everything they wanted
24 to know. To the extent that it didn't, we urge that we
25 then should have had the right to find out what else the

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2 Government knew.

3 For that purpose, your Honor may recall, I had
4 subpoenaed the Federal Bureau of Investigation. I had
5 requested the United States Attorney's office records and
6 the Grand Jury record to establish that at the time Mr.
7 Doulin was being questioned they already knew all the
8 answers and, therefore, he was only being set up. I will
9 come to that question on the questions of constitutionality,
10 and there we have some real sensitive questions, some of
11 which have never been decided before. I don't think that
12 should deter this Court from making a decision in spite of
13 what counsel said in his brief, that it is novel and should
14 be decided by other Courts. I think it is within the
15 purview of this Court to make a decision, novel or not
16 novel. We urge under the Mandujano case, which was decided
17 by the Fifth Circuit, and the Fructman case, and the recent
18 one in the State Courts, People v. Monahan, that where the
19 witness was a target defendant was being asked questions
20 that the Government already had the answers to, it is not
21 material; they were not being deceived. The Coons case
22 goes a step further by saying where that takes place there
23 has to be evidence as to how this jury was misled or con-
24 fused, that it impaired their prosecution and their investi-
25 gation. That was never done, and in the Coons case the

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2 Court said one can't reach a conclusion as to how material
3 these questions might be until there is such proof.

4 In this case this investigation had gone on for
5 several years. They have indicted people. They have
6 convicted some. Some have plead guilty. There is no
7 evidence in this case, direct or here said or otherwise,
8 that what this man said when he presumably said he denied
9 going to somebody to ask for leniency on a sentence, that
10 that in any way impeded or impaired or hindered or deceived
11 the Grand Jury in their investigation. We say that goes
12 to the question of materiality within the decisions that
13 I have referred to.

14 I think I have covered that pretty thoroughly
15 in my brief, and unless your Honor has some comment with
16 that I would like to go on to, perhaps, another point, which
17 I think is perhaps one of the most dominant points of our
18 application at this time, and that concerns itself with
19 the question of conspiracy.

20 Your Honor will recall that your Honor had
21 some problem initially with respect to the admission of
22 testimony of many of the witnesses as to what Mrs. Grant
23 said, and your Honor admitted this testimony subject to
24 connection. The cases that we relied upon by counsel in
25 his brief submitted to this Court today indicates that

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that's a question of law as to whether or not there was a conspiracy. But that's not what the cases hold. The cases hold that it is a question of law as to the threshold upon which there is the possibility of establishing a conspiracy upon which the Court could admit it subject to connection, but it still has to be finally determined as a factual question as to whether or not there was a conspiracy so as to justify the statement of a co-conspirator to make it binding on this defendant.

We say in this case that there is no testimony establishing a conspiracy. We charge that, and then counsel for the Government in its brief responds to that charge and says, "Yes, we do have evidence that there was a conspiracy not only between Mrs. Grant and Mr. Doulin, but between Mrs. Grant, Mr. Doulin, and Mr. and Mrs. Monell, et cetera; that they were all involved in the conspiracy.

This was something we had not heard until the brief.

If there was a conspiracy between Doulin and Grant, that's enough.

There was nothing in the record to justify the conclusion, really, of a conspiracy existing between Mrs. Grant and Mr. Doulin, and it must be established independent of the statements of the co-conspirator which are alleged.

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2 There must be independent testimony. The Courts have held --
3 the Durbin case referred to in my brief -- that there has
4 to be something positive, really affirmative, something
5 that the defendant himself acknowledged or participated in,
6 or something that the defendant was well aware that he was
7 involved in a conspiracy.

8 THE COURT: Two words: Norman Shapiro.

9 MR. PLATZMAN: We will get to that. There are
10 two things that they mention.

11 THE COURT: That's it as far as I am concerned.

12 MR. PLATZMAN: He mentioned he met the girl in
13 the parking lot and he said that there is the girl friend
14 of the bad boy, and that was used as the basis for estab-
15 lishing conspiracy. I don't get it.

16 THE COURT: I'm not thinking of that.

17 MR. PLATZMAN: Now we go to Norman Shapiro.

18 THE COURT: That's the one. I had not made up
19 my mind with any finality until I heard his testimony.
20 I suggest that his testimony was sufficient for me to
21 conclude that that independent evidence which was necessary
22 had been established and presented, and, therefore, I was
23 required under the law to admit the testimony at that time
24 because it had been properly connected up.

25 MR. PLATZMAN: May I urge then, with some

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hindsight, and being able to look at this from written testimony, that we look at this afresh and in the light not only of what appeared as the testimony but in the light of what the cases have held: It has to be strong; it has to be independent; it has to be no thin thread, but solid recognition by the defendant that he is involved in a conspiracy of some sort.

What did Norman Shapiro say? This takes place months after the events.

What did he testify to? I would like to read three or four questions. He answered a prior question about meeting Mr. Doulin and then he said: Well, I think we both said hello, or something like that, first, and then Mr. Doulin said to me in substance, not precise words, that he didn't know what I may have heard about the Monell case, but he had just put in a good word, or done a favor, something like that, for the grandson of an old friend.

Even if we were to stop at that point, that doesn't spell out a conspiracy to do something wrong or to intercede or interfere. It could have been strictly a voluntary act on his part unconnected with Mrs. Grant, and the two of them had no relation, independent of each other. It does not indicate that he was recognizing getting together with Mrs. Grant to do something, the two of them

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together, for the boy.

Now we continue on:

"Q Was anything else said at that time?

"A There was a little bit more conversation but not much.

"Q Did it relate to the Monell case, if you can recall?

"A Yes. I think so.

"Q Do you recall when it was?"

Now we get to the point that indicates that this is the kind of situation that doesn't justify recognition as a conspiracy:

"A My best recollection -- I am reluctant to give it under oath.

"MR. PLATZMAN: I will object if this is not his recollection to his knowledge.

"THE COURT: Yes. It has to be something you are reasonably certain of.

"THE WITNESS: I couldn't be certain of it."

Evidently Mr. Shapiro was not quite clear as to the language that was used which would have been very critical in determining whether or not a conspiracy did exist. Is this the substantial kind of evidence upon which we can say a conspiracy exists? Is this within the light of

2 cases like the Durbin case where the defendant has to be
3 really aware that he is involved in some sort of conspiracy?
4 Normally, what is it for? Does that spell it out? You
5 not only have to show the conspiracy that two people talked
6 to each other, you have to indicate what is taking place,
7 when, and even statements that are made before or after
8 the conspiracy started or ended are not even admissible.

9 We have to indicate some way in this independent
10 testimony or at least a recognition of who was involved in
11 this conspiracy. If this was an isolated act done by Mr.
12 Doulin on his own, that's no conspiracy, and there is
13 nothing in this sketchy three or four or five questions
14 which qualifies it as a conspiracy within the meaning of the
15 Durbin case, which was very strong in this area.

16 I say that before you can pin statements on a
17 defendant made by a co-conspirator, it has to be something
18 really solid and it certainly was not. It is as thin as
19 I could possibly imagine could exist under any set of
20 circumstances.

21 There was no definition of this conspiracy.
22 There was no indication of what was involved. There was
23 no indication of the purpose of the conspiracy, that he
24 went to try to influence somebody. There was nothing to
25 indicate that in the slightest. We urge, your Honor, that

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2 there is inadequate testimony in this case, particularly
3 where all of the evidence was hearsay, all of it. If there
4 was positive, affirmative, testimony, direct testimony,
5 then perhaps we might be a little more lenient in saying
6 whether a conspiracy exists or doesn't; but if we combine
7 the thinnest of the establishment of the conspiracy to
8 start with the fact that on top of that the evidence that
9 is accused to hold this man is all hearsay, all of it, I
10 say that it would be a miscarriage of justice if this man
11 were held on such a thin situation of conspiracy as alleged
12 by the Government in this case.

13 Now this same principle and other points of view
14 were covered in my brief in the Tripp case, the Minor case,
15 the Falcone case, and the Stanley case, where statements
16 were not within the presence, for instance, of the defendant,
17 or if the statements were vague or inconclusive, or the
18 defendant didn't have knowledge of the very purpose of
19 the conspiracy. There is nothing in this testimony to
20 indicate that he had knowledge of the conspiracy or what
21 its purpose would be.

22 We urge then, your Honor, from that point of
23 view there was no evidence in this case to support the
24 conclusion factually there was a conspiracy. In any event,
25 the Government had the obligation of establishing, assuming

there was some prima facie case -- of submitting that question to the jury as a factual question. Their argument that it was a legal question is incorrect. It is only legal to the point of your Honor accepting testimony subject to connection with the proof that there was a conspiracy; but once that has taken place, that has to be submitted to a jury as a factual determination. It was never submitted to the jury as a factual determination, and the Government had to prove this.

THE COURT: The only factual determination of a conspiracy which would have to be submitted to a jury, in this Court's view, is if the Government had charged Mr. Doulin with the crime of conspiracy, and then his guilt or innocence would be for the jury; but in connection with the admission into evidence of the statements of certain people, the initial question is a question of law for the Court and for the Court alone. I know of no authority to support the proposition that this question is a question for the jury's determination, and I have noted none in your very thorough and very extensive briefs, of which there were two, and which, in this Court's view, were extremely thorough in their preparation and complete in their context.

MR. PLATZMAN: We do urge, though, Judge, that

1 as a matter of law there is inadequate testimony in this
2 case to support the conclusion that there was a conspiracy
3 of which Mr. Doulin was aware, and its purpose, a conspiracy
4 with Mrs. Grant or the Monells or anybody else, to inter-
5 cede and interfere in the criminal justice field, and I
6 don't believe the casual remark to which Mr. Shapiro
7 testified is enough to justify that conclusion. Certainly
8 not the fact that Miss Flo York was the girl friend of the
9 bad boy. I don't know how that comes in as proof that this
10 was a conspiracy.
11

12 I am curious to find out the reason counsel
13 has ascribed that as a basis for concluding that this was
14 a conspiracy, that Mr. Doulin was aware he was involved
15 in a conspiracy.

16 I see that your Honor is looking at his watch.
17 I will move along. There are some things I want to touch
18 on very briefly. We do think that we have one or two other
19 minor points. I would like to go through them very rapidly.

20 The Government started out to establish one
21 thing but their theory of the case was changed. The whole
22 concept was completely changed and we urge that your Honor
23 take that into consideration in determining whether or not
24 in fact they were able to establish what they claim they
25 were going to establish, and that is that there was a

pay off to anybody.

THE COURT: No. Let's get away from that. I have seen that in the papers. That is not what we have here. The question that we have here is whether or not Mr. Doulin made a false declaration or, in fact, several false declarations before a Federal Grand Jury after having been sworn and then proceeding to give testimony. This is not a question of a bribe. This is not a question of a pay off. This is a question of whether or not the Government has by adequate evidence proved the crime which covers false testimony in Grand Juries, what we sometimes call "perjury." It is not a question of whether there was a pay off or not. It is a question of whether in connection with these four counts on which the defendant was convicted he told the truth or lied to a Federal Grand Jury sitting in this District; that's the question.

MR. PLATZMAN: I agree with your Honor. The only reason I am mentioning it is that I am asking your Honor to consider this: The point of view as to whether now under these circumstances there would have been jurisdiction in this Court. There never was any charge that money was involved, that money had anything to do with it. Under what law does it come under Federal jurisdiction? State law, yes.

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2 I must apologize to your Honor that I didn't
3 fully set forth the thought that I have. I had not quite
4 completed it, but I urge that in light of the fact that
5 there was no money involved -- and the jury let him go on
6 that -- and the question is -- let's assume that the
7 indictment started out with no allegations of money or
8 pay off -- would that have been sufficient to justify
9 jurisdiction in a Federal Court? I doubt it.

10 I urge that if that were true the court can't
11 make an allegation and a claim for pay offs and money in
12 order to get jurisdiction, and then if it falls through say,
13 "I got jurisdiction to start with." I'm sorry your Honor
14 got the wrong view of what I intended to drive at. That
15 was my real purpose.

16 I will move on rapidly. I don't want to take
17 your Honor's time. You have read my brief.

18 THE COURT: I have read it and I have studied
19 it carefully. I understand the points you raise.

20 Time is a secondary factor here. A man's
21 liberty and his reputation are at stake. I will listen to
22 you for as long as you want to present your material.

23 MR. PLATZMAN: Thank you very much.

24 THE COURT: You spent a lot of time in getting
25 it together. Now I want to give you every opportunity to

1 speak here on behalf of your client.

2 MR. PLATZMAN: Thank you.

3 I want to cover one thing which doesn't affect
4 the validity, but the number of counts, and that's this
5 question that we talked about at the very beginning of the
6 case, during the case, and that's this problem of frag-
7 mentation. We say that Counts 5, 6, and 7 really make up
8 a single crime.
9

10 THE COURT: They are different questions,
11 however. You know, I did throw out one count, Count 4,
12 because I considered that to be in the area which you have
13 indicated. I did consider this general argument prior
14 to trial. I did throw out Count 4 because I found it was
15 improper, but I see new questions coming up in Counts 5, 6,
16 and 7. I have to disagree with your argument.

17 MR. PLATZMAN: May I then just spend, if your
18 Honor will permit me, another two or three minutes just to
19 indicate why I think it really is one thing.

20 He is being asked in 5, generally: Did you ever
21 talk to anybody or intercede?

22 Then he says, No.

23 Then we go to 6, and now, instead of a general
24 question he is being asked: Did you ever talk to Mrs.
25 Grant?

1 The only way that there would be any inference
2
3 is that he talked to Mrs. Grant. That is a possibility.
4 But then he asks in Count 6: Did you ever talk to Mrs.
5 Grant?

6 The answer is, No.

7 He could have asked if he ever talked to Johnny
8 Jones or Harry Smith. Would that make a separate count
9 for each one? The subject is exactly the same.

10 Count 7 -- as a matter of fact, your Honor will
11 note that in the middle of Count 6 there are some asterisks
12 in the indictment, a gap.

13 Count 7 is the one question and answer which is
14 in the middle of Count 6. It is really continuous and
15 practically the same question which is next in order. I
16 don't see much difference. If one says, Did you ever talk
17 to Mrs. Grant or any other member of the family? And then
18 7 asks him whether he discussed it with anyone -- there is
19 no proof in this case about anyone. The only thing that
20 we do have is possibly you might infer if there is a
21 conspiracy that has been reached -- and I make that as an
22 assumption for this question -- we still have only one
23 person and that is Grant. That's exactly what he is being
24 asked in all of these questions, 5, 6, and 7.

25 In my brief I have referred to two cases where

1 a crime was committed in selling merchandise and what they
2 did: They prosecuted one of them. 360 counts took place
3 in one day. You can't make a separate account out of each
4 one of these, the Court said. To do so would be violative
5 of the Eighth Amendment, cruel and unusual punishment to
6 make many crimes of one crime.
7

8 Suppose he had said: Yes, I spoke to her?
9 Okay, that's one crime. He is guilty now of doing something
10 that was wrong. It so happens in this case there wouldn't
11 have been anything wrong.

12 Assume he was asked the question: Did you ever
13 get \$1,500 from Mrs. Grant?

14 This does involve money which would be illegal.
15 He said, Yes. Could we make six crimes out of that one
16 crime? I don't think so. I think this is stretching it
17 a little bit, particularly in this case not only to make
18 six crimes out of one crime but to make six crimes out of
19 a non-crime to start with.

20 If he had answered, Yes, there would not have
21 been any crime. To make six out of a non-crime exacer-
22 bates the situation.

23 As I indicated, this was relatively small.
24 Perhaps your Honor has thought that he would express to
25 me and --

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2 THE COURT: You may proceed.

3 MR. PLATZMAN: Your Honor, I will go on to other
4 questions.

5 I have one major question concerning consti-
6 tutionality that I would like to review with your Honor,
7 aside from what I have just raised: The question as to
8 violation, perhaps, of the Eighth Amendment, and to do so,
9 to recognize the ability to fragment these offenses by
10 asking more questions doesn't make it more than one crime.
11 I will say that that may be a constitutional question.
12 However, I would like to go to something that is even more
13 important. I dwelt at length on the Mandujano case.
14 Unfortunately the United States Supreme Court has not
15 decided that case. It was in the Fifth Circuit. There were
16 a number of cases that proceeded it. The Court, the
17 Lower Court, has held -- and it appears between the col-
18 loquy of the members of the Supreme Court bench and counsel
19 -- it looks as if they would affirm it but you never know.
20 We have argued enough appeals to know that sometimes it
21 doesn't turn out as it looks on the argument. As it
22 stands now, the Circuit Court has held -- and this is pretty
23 much accepted -- and even Bonacorsa, which was supplied,
24 distinguishes it from Mandumano -- but they re-affirm,
25 they don't reject the opinion; the question there is

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whether or not in the Mondujano case this man who was a target defendant had got his Miranda warnings. He had inadequate warnings on the first session and none of them on the second. So the question as to whether or not his constitutional rights were violated and not getting the Miranda warnings because he was testifying before the Grand Jury, initial Miranda, concerned itself with a very narrow form of custody. It has been expanded that custody means all kinds of custody. Even if the man was questioned in his own home that would be sufficient.

One of the comments of a Supreme Court Judge, I think Judge Marshall or Judge White: Isn't it a fact that a man feels pretty compelled or under urgency when he is sitting before a Grand Jury testifying?

I do not think there is any doubt about this from a human point of view. It appears as if there may be an affirmance, but if a man is before a Grand Jury -- and if Mandujano is right -- he is entitled to his Miranda warnings.

Here Mr. Doulin got Miranda warnings. There is no doubt about it. He got them at great length, except -- and this question has never been raised before; it has been touched upon by the Bonacorsa case strongly enough, whether the question didn't even arise, but I would like

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to read from that decision what the Court said there, and it falls in line with my contention: I say if Mandujano is correct and a man is entitled to Miranda warnings when he is before a Grand Jury, he is entitled to Miranda rights, the rights go with the warning. One of those rights is fundamental, and that is the right of counsel. This man was given his Miranda warnings but he was told because of the nature of that custody that he can't bring his counsel into the Grand Jury room, so to that extent he was deprived of having counsel.

THE COURT: Yes, but he didn't have to go into the Grand Jury room without him, and he could have said, "My position is that I am entitled to have counsel at all stages of the inquiry, and I will not enter the Grand Jury room unless my counsel is at my side," and that would have been the end of that.

MR. PLATZMAN: That's right.

THE COURT: Unless the Government chose to take him to the Part 1 Judge for other reasons, but he entered the Grand Jury room and proceeded to testify. It would seem to me that he had the right to assert that counsel should be present, and he could have asserted that right by refusing to go in without counsel, and, as I say, that would have been the end of the matter. Despite that he

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2 chose to enter the Grand Jury room not once but twice
3 approximately two years apart. I think that's powerful
4 evidence to the contrary, so that I don't believe you can
5 rely on Mandujano, and I would suggest that I, at least,
6 would feel that the constitutional attack, interesting
7 as it is, is not supported by the fact in this case,
8 particularly when you take the fact that he did the same
9 thing approximately two years later; with all the time in
10 the world should he have chosen to do so he could have
11 spoken with counsel, but what did he do? He returned.
12 He went back in.

13 MR. PLATZMAN: I recognize that, Judge, however,
14 we must remember that he was not represented by counsel at
15 that time, and he didn't have an attorney who could have
16 advised him. I am not sure whether doing this voluntarily,
17 coming down in and of itself, would constitute a waiver
18 unless he knew waiver itself implies knowledge of his rights.
19 I don't believe I knew at that time what Mandujano was
20 going to decide, and going before the Grand Jury is custody.

21 A great many of the Federal Court decisions have
22 been critical of what has happened in recent years before
23 Grand Juries where target defendants are being questioned,
24 and this is sort of a collateral to the question I am
25 raising, Judge, and that is that when called a man who is

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a target defendant before the Grand Jury, one constitutes a violation of Fifth Amendment rights and --

THE COURT: I think the Circuit has come down the other way, and I would refer to United States v. Winter, United States v. Zweig, and United States v. Curallo.

MR. PLATZMAN: I agree that they have said it can be done. It can be done. The question is whether or not in light of the Mandujano decision we might modify our thinking a little bit.

I would like to read that one statement in the Bonacorsa case which they say distinguishes it from the Mandujano case, and yet that was not the specific point being discussed. At one point the Court in its opinion at Page 1459 pointed out that appellant was represented by counsel at the time of his appearance before the Grand Jury and counsel was physically present. The next page, 1460, and this is the significant point that I am making, is that moreover appellant's attorney was at his side when his crucial testimony was taken by deposition on December 17th.

I say that's terribly important for this reason: To keep an attorney on the outside takes away the most important aspect, to determine when he needs an attorney.

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2 He doesn't have him there. He has to make the decision:
3 Do I need a lawyer? Do I have to consult a lawyer?

4 That, your Honor, is not really representation.
5 He doesn't know enough about the law to say to himself,
6 "Well, now, for this question I need a lawyer and for the
7 other question I don't."

8 I think this is the crux of what my argument is,
9 and his going in without a lawyer, without knowing that he
10 did have the right to have his lawyer alongside of him,
11 and since he didn't have the right -- he was told -- to
12 have the lawyer alongside of him, he did nothing about it.
13 I am not saying he did it knowingly; he didn't. He didn't
14 know the law. Probably most of us didn't until Mandujano
15 was decided.

16 It is a novel question. I agree with your Honor
17 that different points of view may differ at this point,
18 but I am raising this question, a question of first im-
19 pression, and we are urging that if Mandujano is correct,
20 then he is entitled to have a lawyer at his side, and
21 instructions to him that he cannot have a lawyer at his
22 side constitutes a violation of right to be represented
23 by counsel.

24 There are a few other matters that I would like
25 to touch upon --

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THE COURT: If they are in your brief I have read your brief. If they are not you certainly may proceed.

MR. PLATZMAN: They are in my brief. This is on questions. I do agree, your Honor, that I need not belabor these points because they are covered, they are rulings of evidence. It is the kind of thing that your Honor might look upon, I say in hindsight, a little differently. I am sure your Honor has been thinking about it and considering it.

I want to refer to only one of them and that is the question of the telephone calls, because it was through these telephone calls that there was the tie in or the statements that were introduced into evidence by an alleged co-conspirator of the defendant, and that is the telephone calls by the three witnesses. All admitted they didn't know who called except by what was contained in the content of the conversation, and we urge that under the present Rules, as well as the common law before this, before a telephone conversation may be admitted, although it might be admitted subject to connection, but after it is admitted it can be admitted only after by independent testimony, that that caller be identified. There was no foundation and it was not established afterwards.

Mrs. Grant was questioned about telephone con-

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2 versations. These telephone calls, all three of them, came
3 after his sentence to jail, Richard Monell's sentence to
4 jail. That's pinpointed.

5 Mrs. Grant first testified she spoke with
6 Weissman or Cohen, and then she got mixed up and said it
7 was Weissman, and she changed, I think twice, during the
8 course of her testimony, and whether it was Weissman or
9 Cohen is not important but for the purpose of conceding
10 the proof that existed here let's assume it is Cohen; but
11 in all cases she made a telephone call to find out when the
12 trial was coming up which was before this. It was an
13 entirely different phone call, and the fact that the ques-
14 tions are asked doesn't mean that there is evidence in there.
15 The questions were asked as to whether she called these
16 fellows around this time to find out why he was put in
17 jail, and there was a doublecross, or something to that
18 effect, and her answer was, No.

19 Now the fact that she answered, No, I agree that
20 the Government may not be bound by her answer, but there
21 has to be some other testimony that she did make that call
22 at that time.

23 There was some testimony also near the end of her
24 examination in which she made a call -- and I don't remember
25 exactly to whom it was made -- after he was released from

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jail to find out when he was released. She didn't know. She said at the time he disappeared and she didn't know where he was. This is long after this particular period.

So we have two possibilities. The best you could construe from the Government's point of view is that she did make the call to find out when the case was coming up for trial. She made no call following, and this was all the same day, following the sentence of jail, and then she may have made a call later on to find out what happened to her lovely grandson who disappeared after he was released from jail.

I say that none of that constitutes a sufficient basis for forming the foundation for telephone conversations.

Now we must remember -- and this is the critical portion of this -- these were incoming telephone calls. If it was an outgoing call to a specific number and the number was registered in the name of a certain person, we might draw some inferences. This would be logical, and under the new Rules this is perfectly proper, but not on incoming calls. Here we have lots of tough, rough, situations where this certainly could have been made by Flo York who identified herself making the assumption. She was the one that testified about this conspiracy -- not the conspiracy, but the so-called pay off. She could have done

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anything. She was his girl friend and, apparently, his mistress at that time.

Anybody could have made these calls and said, "I am so-and-so's grandmother," and the three individuals, none of them ever were able to identify, nor was there any other testimony in this record to identify.

I am going to leave this, and there are other rulings over which we had some discussion, and also requests to charge on conspiracy, and so on, but I am sure your Honor has gone over those and I don't see much point in my reviewing these in any great detail than expressed in my brief, which I hope was not too burdensome to read, in spite of its seventy pages in length, and something I usually don't do. It was not that brief.

THE COURT: Add your 29-page reply brief to that. You almost forgot, but I didn't because I did read it. Obviously it evidences in approximately 100 pages of briefing a thorough presentation, just as this afternoon's presentation has been thorough.

MR. PLATZMAN: Thank you, your Honor.

Upon this note I should like to rest. We urge that on these grounds your Honor might consider valid, particularly, the questions of construction of the language of the counts, the question of the evidence of conspiracy,

the questions of telephone calls -- these are serious questions which we think I am sure your Honor has considered and thought about carefully, and we hope, in hindsight, has reviewed them. We hope that your Honor will agree with the defendant that there should be a judgment of acquittal on all the remaining counts.

MR. SCHWARTZ: Your Honor, I intend to be very brief, subject to specific questions which your Honor may wish to direct to the Government.

First, with respect to the alleged defects of the questions in the indictment, the Government agrees with your Honor that the recent Second Circuit decision, United States v. Bonacorsa, is extremely persuasive in controlling and showing that there was nothing improper about the questions in any of the counts in the indictment. Specifically, I would make one reference to that decision, a reference which was omitted by Mr. Platzman, and that is with respect to one of the questions about which there was perjury in the Bonacorsa case. The question was -- and the answer which had preceded it was, "I didn't want to hold any money. The fifth horse I bought outright and I believe the name of the people was Rubin, Steve Rubin." The question was, "And anybody else?"

The Second Circuit held that the following answer,

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2 which was pejorative, was responsive to the question when
3 taken in the context of the examination.

4 Your Honor, that is very similar, obviously,
5 to what we have in Count 2 with respect to the last question
6 and answer in that count, and the answer which had preceded
7 the last question where there is a specific denial of ever
8 approaching or speaking to any District Attorney or Judge
9 by Mr. Doulin.

10 The Government would also respectfully refer the
11 Court to the District of Columbia Circuit Court of Appeals'
12 decision in United States v. Chapin, which also supports
13 one of the contentions here, which is that Mr. Doulin at no
14 time during the course of this trial indicated that he had
15 any confusion or any uncertainty with respect to his
16 understanding of the questions which had been asked of him
17 in the Grand Jury except with one matter, and he indicated
18 that he had not been thinking about the Leon Greenberg
19 speeding ticket when he testified in the Grand Jury.

20 Well, your Honor, the very fact that Mr. Platzman
21 sought to ask a question with respect to that, and Mr.
22 Doulin specifically made an answer about his understanding
23 with respect to the Greenberg traffic ticket incident,
24 shows that when Mr. Doulin had any intention of claiming
25 he was uncertain as to the meaning of any of the questions

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2 in the Grand Jury, he made that known in court.

3 Your Honor, with respect to the question of
4 materiality, the Government believes that we have fully
5 briefed this. I would simply make a point that as a matter
6 of law whether the Government knew all of the information
7 about which we eventually did receive information at the
8 time that Mr. Doulin was summoned to appear as a witness
9 before the Grand Jury, absolutely it is not relevant to any
10 question of whether there could be a perjury indictment
11 filed against Mr. Doulin.

12 I respectfully refer the Court to the decision
13 in United States v. Carson which is cited in the Govern-
14 ment's memorandum of law.

15 Briefly commenting with respect to the consti-
16 tutional claims which defendant has raised here, first I
17 would point out, your Honor, that the decision in
18 Mandujano, which the defendant places great reliance upon
19 here, simply does not go as far as Mr. Platzman claims it
20 does. Mandujano involved the situation where a prospective
21 defendant is called before the Grand Jury and was advised
22 of, at best, half of his Miranda rights. Obviously that
23 is quite different from what happened here. There is
24 absolutely no indication in Mandujano that the Court in-
25 tended to suggest that a prospective defendant was entitled

to have counsel in the Grand Jury room.

As we suggest in our memorandum, however interesting a question that might be, it is not pertinent here where Mr. Doulin appeared without counsel, without ever indicating that he desired to have counsel with him.

With respect to the conspiracy point, your Honor, Mr. Platzman has made the claim today, and in his memorandum, that the defendant never knew the scope of the conspiracy which the Government claimed as an evidentiary basis for admitting various statements. I refer the Court to the fact that the Government submitted an extensive memorandum of law which, as your Honor referred to in the course of the trial, the Court treated as an offer of proof with respect to the scope of the conspiracy, the participants of the conspiracy.

Mr. Platzman makes slight of Norman Shapiro's testimony with respect to it being independent evidence of Mr. Doulin's participation in the conspiracy or joint venture with other people. Well, your Honor, the Government cannot imagine a more persuasive piece of proof than an admission by the defendant, almost a confession, showing by the very circumstances that he must have known what was happening before him. He must have had that conversation with Mr. Shapiro because he was aware of the fact that

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Mrs. Grant had made a phone call to Mr. Shapiro in which she made a statement that the sentence had been bored and paid for by the undertaker.

There is no other logical explanation for the context in which that statement was made to Mr. Shapiro by Mr. Doulin, and we submit that on that piece of evidence alone the Court could probably find that there was sufficient independent evidence of Mr. Doulin's membership in a conspiracy to justify the Court's conclusion that the Government had connected up all of the evidence and therefore placed the evidence before the jury for its determination.

Your Honor, the Government would be happy to answer any questions which you might have; otherwise that would complete our presentation.

THE COURT: Thank you.

The Court is prepared to render a decision on the defendant's post-trial motions.

The defendant has moved for judgment of acquittal for a new trial to suppress all of the testimony before the June, 1973 and February, 1975 Grand Jury and seeks further relief such as an application for a new trial on the ground of newly discovered evidence.

The Court has considered the moving, opposing, papers and extensive briefs of counsel and in considering

the various arguments it makes the following observations:

The defendant's argument that the questions asked in the Grand Jury and set forth in the four counts of the indictment on which the defendant was convicted were sufficiently ambiguous to support more than one reasonable interpretation, this argument must fail since the defendant chose to bottom his defense on his denial that his answers were untrue. He did not defend on the ground that the questions were ambiguous or were not understood by him. An example set forth by the Government would serve here. In connection with the matter of the traffic ticket the defendant indicated he was unable to understand the thrust of the inquiry.

The matters which were presented to the trial jury and on which the trial jury found the defendant guilty, there was no indication put forth by the defendant that he did not understand the questions.

In any event, it was for the jury to determine whether the defendant gave or could have given any other meaning to the questions. See *United States v. Bonacorsa*, Docket No. 79-1285 (Second Circuit, January 9, 1976, slip opinion Page 1451 and following); *United States of America v. Chapin*, 515 Fed. 2nd 1274 (D.C. Circuit, 1975).

Defendant's argument that there was inadequate

1 independent evidence of a conspiracy which would permit
2 the introduction into evidence of alleged statements in
3 furtherance thereof must also fail, the Government having
4 put forth sufficient evidence in the form of the testimony
5 of Norman Shapiro to permit it to go forward and offer the
6 statements which were presented to the jury.
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8 Defendant's argument that he was entitled to have
9 counsel with him in the Grand Jury room must also be
10 rejected whereas here Mr. Doulin never expressed any desire
11 for the assistance of counsel.

12 The Court has considered the various other ar-
13 guments, including the argument that the Court erred in
14 denying the continuance; in that regard the Court holds
15 that it acted within its discretion and, further, that the
16 defendant was fully and adequately represented at trial.

17 The Court rejects the argument there is newly
18 discovered evidence sufficient to warrant the granting of
19 a new trial. The witness to whom reference was made,
20 particularly Monsignor Markowski, appeared at the trial
21 and could have been recalled as a witness following cross-
22 examination of Mr. Doulin during which the Government made
23 certain inquiries.

24 The claim of an inability to interview Jean Grant
25 has been considered by the Court and has been rejected.

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2 The Court recalls that upon the completion of Mrs. Grant's
3 testimony she was kept in the courthouse at defense counsel's
4 request and counsel could have conferred with her.

5 The balance of the claims presented to the Court
6 relative to materiality, relative to duplicitous counts
7 or multiplicitous counts, have all been considered by the
8 Court and are found to be without merit. Accordingly, the
9 defendant's motion is denied.

10 I will endorse the motion papers accordingly and
11 we will take a very brief recess following which we will
12 proceed with the sentencing.

13 [Recess.]

14 THE COURT: I have endorsed the motion papers
15 as follows: Motion denied in accordance with all decisions
16 rendered this date. It is so ordered.

17 It is to be filed.

18 We will now proceed to the matter of sentencing.

19 Motions having been determined, I would ask
20 defense counsel if there is any reason why sentence should
21 not be imposed at this time.

22 MR. PLATZMAN: No, your Honor. I see none other
23 than the comments I may have. Other than that I see none.

24 THE COURT: Mr. Doulin, is there any reason
25 why sentence should not be imposed at this time?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Mr. Platzman, I would hear you
4 relative to anything you wish to say on Mr. Doulin's
5 behalf or any information you wish to present in mitigation
6 of punishment; then I will hear from Mr. Doulin, and then
7 from the United States Attorney, if he has any comments
8 or recommendations prior to sentencing.

9 You may proceed.

10 MR. PLATZMAN: I will try to be brief, your
11 Honor.

12 I think we have all lived with this case and
13 with this man for such a long time that we have begun to
14 know each other a lot more than when it had started. I
15 must apologize: The pre-sentence brief of the Government,
16 I got it late and I didn't get it until the night before.
17 I delivered it to your Honor and I know it gave your Honor
18 very little time to read through. I hope your Honor did
19 have an opportunity to at least go through the substance
20 which was intended essentially to refute some of the
21 statements that counsel had made, counsel for the Government
22 had made, in its pre-sentence memorandum.

23 I think the only basic criticism I had of the
24 memorandum was that throughout the whole memorandum that
25 had been supplied it was still implicit that the defendant

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had been convicted of the things that the Government had initially charged, including the counts of which he was acquitted, and that's not the issue. The issue is a question as to whether he lied as related to the four counts that survived, unless there was something else which could certainly be proper in sentencing outside of what took place on the trial that he really was involved in pay offs and gambling et cetera. If that were true that might be shown on sentence as well, and I would say yes, this might go not in mitigation but in increase of sentence, and in consideration of that point, but this is not what happened here and there is no such situation.

This man was acquitted of being involved with gamblers. There was no evidence anywhere in the record that he was.

THE COURT: He was not tried before me, at least, on the grounds of being involved with gamblers. There was a gambling basis to the Grand Jury's investigation which gave this Court jurisdiction of the proceedings, but the charge was strictly whether or not the defendant told the truth with respect to certain questions asked of him and certain answers which he gave in the Grand Jury.

MR. PLATZMAN: The reason I mentioned it is that in the memorandum there are statements about protection

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2 for gamblers and fixing, and things of that sort, which
3 I think are somewhat afield on this question of sentence.

4 We may not have been able, legally, to have
5 established our position with respect to the construction
6 of interference and interceding, but I think I would ask
7 your Honor, at least, to consider this in imposing your
8 sentence as to whether this man was really, perhaps,
9 attempting if he had contacted anyone concerning a request
10 for leniency of sentence, he was attempting to do some good
11 for someone and not do anything illegal or improper. His
12 illegality was in not telling the truth before the Grand
13 Jury, and that is the illegality with which he should be
14 charged, not the illegality of obstructing justice or doing
15 things wrong, no proof of which has existed and is not
16 really a basis of any claim, even in the probation report
17 which frequently would go into collateral matters of this
18 type.

19 I think one area that I don't quite understand
20 is this: Counsel for the Government severely attacked Mr.
21 Doulin and used the expression that the most serious
22 that stand out above all others was the fact that in some
23 way he took advantage of non-admission of the Weissman
24 confession. Your Honor may recall that in the memorandum.
25 It was not admitted by your Honor for good legal reasons.

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2 I think the defendant had the right to stand by that non-
3 admission, and certainly we don't think that one should
4 because of that non-admission infer that more things than
5 even the confession itself would have allowed had it been
6 admitted.

7 I should like to get to a discussion about this
8 man, and I won't be very long. He has had a lifetime of
9 service to this community. He is 72 years of age. I am
10 assuming that your Honor has read the probation report.

11 THE COURT: I read the probation report and I
12 have read the various letters which are here from members
13 of his family, friends, neighbors, and people in the com-
14 munity. I think I am by virtue of having seen him at the
15 trial and heard those who testified in his behalf at the
16 trial and read the various materials which I just made
17 reference to, I think I have an overall picture of William
18 E. Doulin.

19 I have a picture of a man who has occupied a
20 position of respect in his county and in this State for
21 a number of years, a man who started as a fireman, became
22 involved in politics and had a business, the operation of
23 a funeral parlor, and through the years he got to know a
24 great many people, many of whom have either testified for
25 him or have written to this Court. Each of those letters

has been read and has been considered by the Court in determining what should be done in this case.

MR. PLATZMAN: I appreciate that, your Honor, and it curtails and makes it unnecessary for me to perhaps say some of the things I did.

THE COURT: That was not meant to cut you off.

MR. PLATZMAN: I am accepting that, but among the very people who supported him were not only his friends but his enemies, people who are opponents. They have spoken highly of him. People who would normally have been hostile because of politics, the fact that he was active in politics -- and this climate of post-Watergate is sometimes a pretty rough situation -- it should not be held against him.

It is true that sometimes people who are in politics gain that way by power; they gain power, they use their power improperly, and they maintain it because of an organization, a machine; but it is also true there are men like William Doulin who have obtained his position of respect among fellow members for one reason, and that is that he was good. He was kind. He did things for people.

Reports are that he loaned money to everybody, whoever wanted it, whoever was in need, and he never got it

back. I think one of the major threads through all of that correspondence is one thing -- and this is almost unanimously agreed upon by people who hated his politics; there was a letter I read from somebody who disagrees with him, dislikes him -- but everyone had to admit one thing, and that was that he was good to the poor. He gave people money. He took money away from himself.

I think there is reference made to the time he had money to go on a vacation and somebody came in and needed money, and he gave it out and this was the end of the vacation.

There are literally thousands of instances referred to in there.

Father Markowski, I think, pointed out that he got to know Mr. Doulin when he first met him, and it was in connection with providing for a free funeral for a poor person.

The Grants themselves still owed him for two funerals.

Just about everyone in Orange County had some obligation to him. He did things for everybody.

At this age, at 72, with a wonderful family, he has no money. He lived very nicely, comfortably, but certainly if he were a dishonest man during his lifetime,

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2 if he were taking from people instead of giving, he would
3 have something more than he has today. Even his vacations
4 were modest. He drove down. We all know it is a lot
5 cheaper to drive down. He lived in a motel with no tele-
6 phone. He did his own housekeeping and cleaning and cooking.
7 He had a relatively modest place.

8 This does not demonstrate the picture of a power-
9 ful politician who uses his position of influence to do ill.

10 I would like to relate one incident that I
11 personally experienced that took place during the trial.
12 I mentioned it very briefly in my memorandum. I might
13 refresh your memory --

14 THE COURT: The lady with pimento?

15 MR. PLATZMAN: That's right.

16 THE COURT: I am well aware of what you say.
17 If you wish to recount that --

18 MR. PLATZMAN: I won't.

19 Here was a situation where a man was involved
20 with one of the most horrible things in his lifetime. He
21 has never been in trouble before. He never had any brush
22 with the law. Nobody ever accused him of anything wrong,
23 and he fell into this investigation and answered in a way
24 that he should not have answered.

25 With all of this, and the terrible things that

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were happening, he was running after that black woman with the little baby.

I have mentioned perhaps some of his friends and some of his enemies. One of the instruments that has opposed Mr. Doulin politically over the years has been the Times Herald Record. They have been a real foe. It appears -- your Honor may have seen some of their editorials that followed this trial -- and during the trial they were horrible: They attacked him. Why did they attack him? Because his politics are not what they like, but just the other day, a month after the trial, they reconsidered this question of what he was guilty of, and I have referred to it in my brief at Page 8, and it won't bear repetition, but it perhaps takes a big newspaper, or a good editor, to acknowledge that perhaps he might not have criticized him the way he did. They still don't like his politics and would rather have other people in the political organization. They have come to the conclusions that were mentioned in that editorial that I have referred to in my brief, and they felt it was their duty to bring this to the attention of their readers, I assume, because of their past history.

I do not think there is anything I need add to what your Honor has already read in the report. That

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2 probation report shows not one thing that is detrimental to
3 this man. He has had a wonderfully good life doing things
4 for other people. Maybe he has got himself into trouble
5 by trying to do more things, more good things for people.

6 THE COURT: He has gotten himself into trouble
7 because a Federal Grand Jury found him guilty on four
8 counts of lying.

9 MR. PLATZMAN: We ask your Honor, in view of
10 his history -- he is an aged man, and he has a wonderful
11 type of family, close knit, very devoted to each other,
12 he has a one-man business with a license that will die
13 with this conviction, because he is a licensed mortician,
14 the punishment that he has had with the publicity, the
15 destruction of a lifetime of enjoyment of a good relation-
16 ship in the community, it is the kind of punishment that
17 cannot even be matched by anything. He has had it, I
18 think, by way of punishment at a level that is at least
19 equal to the crime, if not perhaps more so; therefore,
20 your Honor, we urge, in view of this, that your Honor
21 consider your sentence with mercy, that you extend leniency
22 to this man, and that he be suspended and given a probationary
23 period in which he would be subject to the jurisdiction of
24 the Court. We think that his responses may have been
25 ill advised but perhaps not even more so than -- I won't

2 equate it, but it certainly is in the category of generally
3 what we have all experienced many times, and, frankly,
4 I must admit I have used it once or twice in my lifetime
5 as a lawyer by asking a witness on cross-examination,
6 "Did you ever talk to anybody about this case before coming
7 in court today?" And the answer is no. We have seen that
8 so often. Mr. Schwartz used it with respect to one witness
9 in this case. I don't know whether there was an answer.

10 But that happens, and witnesses sometimes don't
11 say the right thing. I think that answers were improperly
12 framed before the Grand Jury and he did the wrong thing
13 in denying something which he could have admitted, and it
14 is quite clear if he had said, Yes, that would have been
15 the end of it. He didn't stand in the way of any real
16 investigation. There was no harm ultimately done other
17 than the direct violation of the law, none of which should
18 be condoned by anybody. We recognize that, and for that
19 he has been punished. He is being punished and continues
20 to be punished with the mark of a criminal conviction
21 against him.

22 We urge that under these circumstances, in view
23 of his past history and the age of the man and the relation-
24 ship with his community and with his family, that your
25 Honor extend mercy to him and provide for a suspension of

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his sentence with probation.

THE COURT: Mr. Doulin, as I said a few moments ago, I would ask you at this time if there is anything you wish to say in your own behalf, any information you wish to present in mitigation of punishment.

THE DEFENDANT: First, I want to thank your Honor in letting me say a few words.

I want, too, to thank you and your staff for their kindness.

I also want to say that I have always been under the impression that if a man took the Fifth Amendment he had something to hide. When Mr. Schwartz called me on the telephone and asked me to come down before the Grand Jury, I was busy the day he called. He said that I should come the next day and I said, "I am busy. I have a funeral." He said, "When can you come?" I told him when and I came down here.

It is very true, your Honor, that I didn't bring a lawyer. I didn't take the Fifth Amendment or anything. He told me that I could have a lawyer assigned to me and that the lawyer would have to stay outside. I said, "Well, I have nothing to hide. Go ahead with your questions."

He asked me various questions which I thought that I answered very truthfully, to the best of my ability.

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This has been my makeup.

I have the reputation throughout the State -- maybe I hurt some people's feelings -- but I always told the truth and I have tried to tell the truth. I was informed that I could have had counsel outside the door. I could have taken the Fifth Amendment, but, as I said before, I believe that anyone who takes the Fifth Amendment has something to hide. Maybe I was wrong, but I guess I was treated fairly and now it is up to you, your Honor. This is in your hands and in the hands of God, and that's all I can say.

Thank you very much.

THE COURT: Thank you, Mr. Doulin.

At this time I would ask the United States Attorney, who also submitted a pre-sentence memorandum to the Court, if he has any comments or recommendations that he wishes to make prior to the Court's imposing sentence.

MR. SCHWARTZ: May I be heard for a moment?

THE COURT: Yes.

MR. SCHWARTZ: As your Honor has noted, you do have the pre-sentence memorandum which was submitted, and the Government had an opportunity to examine the pre-sentence report, with the letters attached thereto, as I

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know Mr. Platzman has.

In Mr. Platzman's response to the Government's pre-sentence memorandum, I think he attempts to take the position that the crime that was committed here is at a low level, a low level crime, meaning one that is not of great weight and seriousness, and one that should be considered as a low level crime. I think, your Honor, that the Government's position is clear that this is absolutely incorrect. The crime of perjury, of making false statements to a Grand Jury, or any duly impaneled body which is attempting to conduct an investigation and to do its duty, to wilfully lie to that body, obviously that is very serious. Without truthful testimony it would be impossible for such bodies to conduct their business.

What motives Mr. Doulin may have had for deciding not to tell the truth to these Grand Juries, perhaps we will never know.

I think it is of some interest that in the pre-sentence submitted by Mr. Platzman -- and even today in the comments Mr. Platzman made -- Mr. Doulin is really trying to be on both sides of the fence. He tells your Honor and he tells the Probation Department, as I understand it, that he is innocent, yet, really, in almost a tacit admission he says, "So what if I did talk to a District

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2 Attorney or I did talk to someone? I didn't do anything
3 wrong by talking to them."

4 I think, your Honor, that's being very unfair
5 to this Court and to the jury that sat in this case. Mr.
6 Doulin is not, at this time, still able to tell the Court
7 what, if anything, he did in connection with the Monell
8 case. I think it is an attempt, really, to try and say,
9 "Well, it is all right to lie to the Grand Jury because
10 what I was lying about really was not criminal in my
11 view or in my mind. I didn't do anything wrong at the
12 time, so not to tell the Grand Jury about it really is not
13 wrong."

14 I think, of course, that the system could not
15 operate if the witness were to determine whether or not
16 what he did was wrong or whether or not what he did was
17 important to the Grand Jury, and we can never function if
18 witnesses made those determinations and then decided whether
19 or not to give truthful testimony.

20 What other motives he might have had for not
21 testifying to the truthful facts here, I think one that is
22 fair to consider is the fact that Mr. Doulin, of course,
23 held a position of public trust. A man of great influence
24 in Orange County and in his community, and he let his
25 constituents down because, I submit, your Honor, what he

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2 did was to enable a criminal, a man who had very serious
3 violent tendencies, be released or to receive considera-
4 tions that he probably should not have received, and that,
5 too, may be a motive behind Mr. Doulin's perjury.

6 I won't go into any detail concerning what the
7 Government believes is an overwhelming case of the wilful-
8 ness of Mr. Doulin's statements before the Grand Jury.
9 He had numerous opportunities to explain those statements
10 or explain his testimony that was discussed fully in the
11 briefs and also in the argument on the motions earlier
12 this afternoon.

13 The final fact which I would bring to the Court's
14 attention is the question of Mr. Doulin's license. I don't
15 know what happens to Mr. Doulin's license. I don't think
16 Mr. Platzman knows, or at least that's what he indicated
17 in his pre-sentence memorandum, but what is of significance,
18 I think, to the court is that since the conviction Mr.
19 Doulin continues to be chairman of the Orange County
20 Republican Party, and as far as I know -- and I saw nothing
21 to the contrary in the probation report or in the pre-
22 sentence report -- continues to be on the State Athletic
23 Commission as one of its Commissioners or Deputy Commis-
24 sioners.

25 MR. PLATZMAN: No.

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2 THE COURT: I am of the impression that he is
3 no longer a Deputy State Athletic Commissioner.

4 MR. PLATZMAN: That's correct, your Honor.

5 MR. SCHWARTZ: In any event, your Honor, it is
6 clear from the Government's memorandum, some articles
7 that were cited, and I think it is proper that the Court
8 have its attention drawn to those articles, that Mr. Doulin
9 is still the chairman of the Orange County Republican Party,
10 and as far as one can determine from those articles and
11 from the surrounding facts, intends to continue in that
12 capacity.

13 Thank you, your Honor.

14 THE COURT: The Court is prepared to impose
15 sentence.

16 The defendant will please rise.

17 I have before me a man 72 years of age who, up
18 to his conviction in this case, had a clean record. So
19 far as I can ascertain, this case represented the first
20 case in which he had been charged with wrongdoing of any
21 kind.

22 He was convicted before this Court on four
23 counts of what was originally an eight-count indictment
24 charging him with false declarations before a Grand Jury --
25 in short, perjury. The defendant had the right to insist

1 that the Government prove the charges against him at trial
2 and that they be proved beyond a reasonable doubt. He was
3 not required, but did choose, to take the stand, to take
4 the oath, and to flatly deny under oath that the statements
5 which he had previously made before the Grand Jury, which
6 were also under oath, were untrue.
7

8 In this Court's view, a lie under oath is serious.
9 I suggest that to repeat that lie under oath makes the
10 matter doubly serious.

11 The jury, by its verdict, determined that the
12 testimony in the Grand Jury and the testimony of the defend-
13 ant at trial was untrue, and it is for his false statements
14 before the Grand Jury that he stands before this Court.
15 He stands before this Court convicted of nothing else,
16 and the Court will impose sentence on the charges on which
17 he was convicted and on none other.

18 It is clear from the pre-sentence report that
19 the defendant has great pride in his leadership and
20 activities in the Orange County area. Indeed, as has been
21 said, he has occupied a position of considerable trust and
22 has been held in high regard by many throughout the State.
23 This was evidenced at the time of the trial when, among
24 his character witnesses, were a former Governor, a former
25 Congressman, a Judge, a distinguished member of the clergy,

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and others of both high and low station.

His background has been related previously, and I shall not go into that.

He has impressed the Court as an intelligent and pleasant individual, a dynamic man who exudes confidence and who obviously has great pride.

The Court has looked hard and has studied the case, and after viewing the case can find no mitigating factors to erase the fact that a jury in this District has found, after seeing and hearing Mr. Doulin, that he lied under oath.

It would appear that he did, in fact, speak to the late Abraham Weissman, and while his speaking to Mr. Weissman does not in this Court's view in any way represent a crime in and of itself -- I suggest that many spoke for Mr. Doulin when he came before me for sentence -- the fact that the matter was covered up by a lie has resulted in his being here today and brings him, I know, great pain and even more, I am certain it brings pain to his family.

I have observed his wife who has stood by him. I have observed his daughters and I have read their letters on his behalf.

It is most difficult for a Court to impose sentence in cases generally. I suggest it is even more

difficult to impose sentence in this case.

The Court has determined to impose the following sentence:

It is adjudged that on each of Counts 2, 6, 7, and 8 the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a term of two and one half years, and on condition that the defendant be confined in a jail-type institution for a period of six months; the execution of the remainder of the sentence of imprisonment is hereby suspended, and the defendant is placed on probation for a period of two years. Probation is to begin at the expiration of the period of confinement and to be subject to the standing probation order of the Court. Said sentence on Counts 6, 7, and 8 to run concurrently with the sentence on Count 2.

That is the sentence of the Court.

At this time I would advise you, Mr. Doulin, you have the right to appeal. I know you are represented by counsel who will advise you of that right again. I would suggest that if you choose to appeal you should do so promptly, as is required by the Rules.

Also, you do have the right to apply for leave to appeal in forma pauperus if you are unable to pay the

costs of an appeal.

I suggest Mr. Platzman advise you to file a due and timely notice of appeal.

Mr. Platzman, we turn now to the matter of the defendant's status. I would ask if you do intend to file an appeal, and if you have an application in that regard?

MR. PLATZMAN: I do have an application, and I do intend to file an appeal. I have discussed this also with the United States Attorney's office. There is bail presently existing, if it please the Court, and we would like that to continue to provide continued freedom during the pendency of the appeal. I think the United States Attorney has imposed a condition upon that. I think there was no objection to that position, as I recall.

THE COURT: My recollection, if I am correct, is that the bail consisted of a \$15,000 unsecured personal recognizance bond.

MR. SCHWARTZ: That's correct, and the surrender of any passport.

THE COURT: What is the condition that you make reference to?

MR. PLATZMAN: We will file an appeal immediately. We will take steps promptly and will not delay it. I will do it during the week.

MR. SCHWARTZ: The Government consents to the continuation of the present bail status based upon the expeditious filing of an appeal.

THE COURT: The bail of \$15,000 personal recognizance bond presently in effect is continued pending appeal on condition that the defendant's passport remain in the custody of the Government and on condition that a notice of appeal be filed by January 30, 1976, one week from today.

MR. PLATZMAN: Thank you very much.

THE COURT: The Clerk indicates that you may have to file a new bond. If that is the case, I will continue the old bond for one week to permit you to execute whatever new bond or undertaking is required.

MR. PLATZMAN: Thank you very much.

THE COURT: Is there anything further?

MR. SCHWARTZ: No, your Honor.

THE COURT: Court is adjourned.

[Time noted: 5:40 p.m.]

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Service of ONE COPY ~~copies~~ of the
within APPENDIX is hereby
admitted this 29th day of
MARCH 1976

Signed _____
Attorney for APPELLEE

Robert B. Fike, Jr.